

CHAN August 19, 2010

Memorandum for: Deputy Commissioner, Trials

Re: **Lieutenant David Dent**
Tax Registry No. 915591
Housing Borough Brooklyn
Disciplinary Case No. 84014/08 & 84826/09

The above named member of the service appeared before Assistant Deputy Commissioner John Grappone on January 26, 2010, and was charged with the following:

DISCIPLINARY CASE NO. 84014/08

1. Said Lieutenant David Dent, assigned to the Housing Bureau Viper Unit, while assigned to Internal Affairs, Group 34, on or about November 11, 2007, engaged in conduct prejudicial to the good order, efficiency and discipline of the Department in that said Lieutenant intentionally, and for no legitimate purpose, forcibly touched the sexual or other intimate parts of a female for the purpose of degrading or abusing said female, or for the purpose of gratifying his sexual desire, to wit: Lieutenant Dent grabbed and kissed said female's breast.

P.G. 203-10, Page 1, Paragraph 5

PROHIBITED CONDUCT - FORCIBLE TOUCHING - SEXUAL ABUSE

2. Said Lieutenant David Dent, assigned to the Housing Bureau Viper Unit, while assigned to Internal Affairs, Group 34, on or about November 11, 2007, having observed or after being made aware that individuals in his company were using marijuana, failed and neglected to take proper police action.

P.G. 202-21, Page 1, Paragraph 8

POLICE OFFICER

3. Said Lieutenant David Dent, assigned to the Housing Bureau Viper Unit, while assigned to Internal Affairs, Group 34, on or about November 11, 2007, wrongfully utilized Department resources for non-Department or other unauthorized purposes, in that Lieutenant Dent used a Department vehicle for personal transportation.

P.G. 203-06, Page 1, Paragraph 15

PROHIBITED CONDUCT

4. Said Lieutenant David Dent, assigned to the Housing Bureau Viper Unit, while assigned to Internal Affairs, Group 34, on or about November 11, 2007, wrongfully transported a non-member of the service, and unauthorized civilian in a Department vehicle.

P.G. 206-03, Page 1, Paragraph 18

VIOLATIONS

LIEUTENANT DAVID DENT**DISCIPLINARY CASE NO. 84014/08**

5. Said Lieutenant David Dent, assigned to the Housing Bureau Viper Unit, while assigned to Internal Affairs, Group 34, on or about November 11, 2007, having been made aware of an allegation of misconduct in which his involvement was alleged, failed to notify his Commanding Officer or the Internal Affairs Bureau, as required.

P.G. 207-21 - ALLEGATION OF CORRUPTION AND SERIOUS MISCONDUCT

6. Said Lieutenant David Dent, assigned to the Housing Bureau Viper Unit, while assigned to Internal Affairs, Group 34, on or about November 11, 2007, having been made aware of criminal allegation made against a civilian acquaintance, contacted said acquaintance and wrongfully divulged or discussed official Department business without permission or authority to do so.

P.G. 203-10, Page 1, Paragraph 3

PROHIBITED CONDUCT**DISCIPLINARY CASE NO. 84826/09**

1. Said Lieutenant David Dent, assigned to the Housing Borough Brooklyn, while on-duty on March 6, 2008, wrongfully and without just cause failed to supervise other members of the service under his supervision, to wit: said Lieutenant failed to ensure that Viper unit video monitors were properly functioning, resulting in his subordinates not observing a violent crime in progress, and not taking police action.

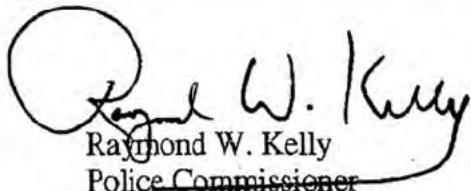
P.G. 203-10, Page 1, Paragraph 5

PROHIBITED CONDUCT

**P.G. 212-98, Page 1, Paragraph 19(a) - COMMAND OPERATIONS HOUSING
BUREAU CLOSED CIRCUIT
TELEVISION PATROL**

In a Memorandum dated August 12, 2010, Assistant Deputy Commissioner Grappone dismissed Specification No. 1, found the Respondent Not Guilty of Specification No. 2, and Guilty of Specification Nos. 3, 4, 5, and 6, in Disciplinary Case No. 84014/08. Assistant Deputy Commissioner Grappone found the Respondent Not Guilty of Specification No. 1, in Disciplinary Case No. 84826/09. Having read the Memorandum and analyzed the facts of this matter, I approve the findings, but disapprove the penalty.

The overall nature of the misconduct committed by the Respondent, who is a ranking officer, warrants a more significant penalty. Therefore, the Respondent is to forfeit thirty-five (35) Vacation days, as a disciplinary penalty.



Raymond W. Kelly
Police Commissioner



POLICE DEPARTMENT

August 12, 2010

MEMORANDUM FOR: Police Commissioner

Re: Lieutenant David Dent
Tax Registry No. 915591
Housing Borough Brooklyn
Disciplinary Case Nos. 84014/08 & 84826/09

The above-named member of the Department appeared before me on January 26, 2010, January 27, 2010, February 19, 2010, and April 30, 2010, charged with the following:

Disciplinary Case No. 84014/08

1. Said Lieutenant David Dent, assigned to the Housing Bureau Viper Unit, while assigned to Internal Affairs, Group 34, on or about November 11, 2007, engaged in conduct prejudicial to the good order, efficiency and discipline of the Department in that said Lieutenant intentionally, and for no legitimate purpose, forcibly touched the sexual or other intimate parts of a female for the purpose of degrading or abusing said female, or for the purpose of gratifying his sexual desire, to wit: Lieutenant Dent grabbed and kissed said female's breast.

P.G. 203-10, Page 1, Paragraph 5 PROHIBITED CONDUCT FORCIBLE TOUCHING - SEXUAL ABUSE

2. Said Lieutenant David Dent, assigned to the Housing Bureau Viper Unit, while assigned to Internal Affairs, Group 34, on or about November 11, 2007, having observed or after being made aware that individuals in his company were using marijuana, failed and neglected to take proper police action.

P.G. 202-21, Page 1, Paragraph 8 - POLICE OFFICER

3. Said Lieutenant David Dent, assigned to the Housing Bureau Viper Unit, while assigned to Internal Affairs, Group 34, on or about November 11, 2007, wrongfully utilized Department resources for non- Department or other unauthorized purposes, in that Lieutenant Dent used a Department vehicle for personal transportation.

P.G. 203-06, Page 1, Paragraph 5 - PROHIBITED CONDUCT

4. Said Lieutenant David Dent, assigned to the Housing Bureau Viper Unit, while assigned to Internal Affairs, Group 34, on or about November 11, 2007, wrongfully transported a non-member of the service, and unauthorized civilian in a Department vehicle.

P.G. 206-03, Page 1, Paragraph 18 VIOLATIONS

5. Said Lieutenant David Dent, assigned to the Housing Bureau Viper Unit, while assigned to Internal Affairs, Group 34, on or about November 11, 2007, having been made aware of an allegation of misconduct in which his involvement was alleged, failed to notify his Commanding Officer or the Internal Affairs Bureau, as required.

P.G. 207-21 ALLEGATION OF CORRUPTION AND SERIOUS MISCONDUCT

6. Said Lieutenant David Dent, assigned to the Housing Bureau Viper Unit, while assigned to Internal Affairs, Group 34, on or about November 11, 2007, having been made aware of criminal allegation made against a civilian acquaintance, contacted said acquaintance and wrongfully divulged or discussed official Department business without permission or authority to do so.

P.G. 203-10, Page 1, Paragraph 3 – PROHIBITED CONDUCT

Disciplinary Case No. 84826/09

1. Said Lieutenant David Dent, assigned to the Housing Borough Brooklyn, while on-duty on March 6, 2008, wrongfully and without just cause failed to supervise other members of the service under his supervision, to wit: said Lieutenant failed to ensure that Viper unit video monitors were properly functioning, resulting in his subordinates not observing a violent crime in progress, and not taking police action.

P.G. 203-10, Page 1, Paragraph 5 – PROHIBITED CONDUCT

P.G. 212-98, Page 1, Paragraph 19(a) – COMMAND OPERATIONS HOUSING
BUREAU CLOSED CIRCUIT
TELEVISION PATROL

The Department was represented by Vivian Joo, Esq. and Beth Douglas, Esq., Department Advocate's Office, and the Respondent was represented by Marvyn Kornberg, Esq.

The Respondent, through his counsel, entered a plea of Guilty to Specification Nos. 3 and 4 under Disciplinary Case No. 84014/08 and Not Guilty to the remaining

subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Disciplinary Case No. 84014/08

Specification No. 1 is Dismissed. The Respondent through his plea is Guilty to Specification Nos. 3 and 4 is found Guilty and is found Not Guilty of Specification No. 2. The Respondent is found Guilty of Specification Nos. 5 and 6.

Disciplinary Case No. 84826/09

The Respondent is found Not Guilty as charged.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Sergeant Martin Bailey, Sergeant Steve Cuomo, Lieutenant Daryl Miller, Police Officer Omar Smith, Police Officer Wilkens Thelusma, Police Officer Carlos Santiago, Deputy Inspector Terrence Moore and Detective Michael Moore as witnesses. The Department also offered into evidence the interviews of Elizabeth Papadatos and Amanda Scher, admitted under Department's Exhibit (DX) 2, 2A, 3, and 3A.

Sergeant Martin Bailey

Bailey, a twenty-one year member of the Department, has been assigned to Internal Affairs Bureau (IAB) Group 9 since August 2009. On November 11, 2007, he was assigned to IAB Group 1, which investigates allegations of misconduct and corruption against members of the IAB as well as those ranked Captain or higher. Bailey served in Group 1 for approximately five years.

Bailey testified as to the information he obtained through his investigation. He stated that on November 11, 2007, he was assigned to handle a case involving the Respondent. At the time, the Respondent was assigned to IAB. Initially, IAB began investigating allegations concerning the Respondent's friend raping a woman. Bailey stated that during his investigation, it was discovered that the Respondent used his Department car to go to a bar in Manhattan from his home in Long Island. He picked up his friend, not a member of the Department, and transported him in the Department vehicle to and from his girlfriend's apartment in the 6 Precinct. The investigation also revealed that he had been present in the apartment while marijuana was smoked and some type of sexual misconduct had taken place in the apartment.

During the investigation, it was also learned that Police Officer Omar Smith, who worked in the 6 Precinct at the time and was once the Respondent's driver, contacted the Respondent and told him about the investigation that was being conducted. Bailey testified that there were four individuals hanging out and drinking at the Respondent's girlfriend's apartment on November 11, 2007. These individuals included the Respondent, his friend Mor Hasan, Amanda Scher, who was the Respondent's girlfriend of approximately two years and Elizabeth Papadatos, Scher's friend. Papadatos was the victim of the alleged rape and Hasan was the alleged perpetrator. Papadatos and Scher

were friends for a couple of years and Bailey believed that they went to school together. Bailey stated that the Respondent did not notify anyone in regards to an allegation of misconduct from that night.

On December 28, 2007, Bailey conducted telephone interviews with both and Papadatos and Scher, which were recorded and transcribed (Department's Exhibit [DX] 2 and DX 3). Bailey stated that he never met with either of the women in person. He was provided with their phone numbers and contact information from the initial investigators and he believed that the women were who they claimed to be on the phone. Bailey added that based on his own knowledge, he did not know whether the people he spoke to on the phone were in fact the people that he believed them to be. Bailey never spoke to them prior to the interviews, but he did hear their voices on a recording that took place after the initial call-out by IAB Group 9.

Bailey testified that when he spoke to Papadatos, she told him that both herself and Scher had been out at a bar drinking and then returned to Scher's apartment. The Respondent and Hasan came over and the four of them were in the living room drinking. Bailey stated that Papadatos told him that she took out a "blunt marijuana cigarette and offered it to everybody," but that the Respondent and Scher declined. Only she and Hasan smoked the marijuana. Papadatos claimed that all four of them were in the living room and that she and Hasan were on a couch passing the marijuana cigarette back and forth. During this time, Scher and the Respondent were on another couch, and the Respondent was trying to get Scher to dance with him.

Bailey stated that during her telephone interview, Scher corroborated Papadatos' account of this part of the evening. Scher told Bailey that she and Papadatos were out drinking and when they were all in the apartment Papadatos took out a marijuana

cigarette in the living room of the apartment. Scher also stated that she did not like smoking marijuana, that she was upset that it was being smoked in her apartment, and that she could smell it.

As part of the investigation, Bailey stated that the Respondent's cell phone records were subpoenaed from Sprint/Nextel (DX 4). These records were requested after the Respondent's initial interview, during which he stated that Smith had called him and informed him of the possible investigation. The records were obtained for a two-and-a-half day period to find out if Smith had called the Respondent about a possible investigation of sexual misconduct and disclosing confidential information, which he did. The cell phone records show only the calls that were made to and from Smith and Hassan from the Respondent's cell phone. They do not contain information about the contents of those conversations.

The worksheet¹ for the cell phone records shows that they refer to the time period from 11:57 p.m. on November 11, 2007 to 10:34 a.m. on November 12, 2007 (DX 4). During this period of time, the worksheet showed that there were four calls from Smith to the Respondent, 11 calls from Hasan to the Respondent, one call by the Respondent to Smith's cell phone, and one call to Hasan's phone. Bailey stated that they also received a copy of an Unusual Occurrence Report, referred to herein as a "49"² (DX 5), which was prepared by the Patrol Supervisor on the night of the incident. This document reflects the initial investigation of the sexual assault. The Respondent was notified to appear for an official Department interview on March 5, 2008. Bailey testified that during the interview, the Respondent was questioned about divulging Department information to

¹ The Court was informed that the Cell phone records are provided by Sprint/Nextel on a computer disk and the Advocate then downloaded the relevant information onto a printout or worksheet. The disk and the worksheet were admitted into evidence under DX 4 A & B respectively.

² Departmental memorandum

Hasan. Bailey acknowledged that during the interview, the Respondent stated that he had called Hasan and asked him if something happened that night that he was not aware of, and that Hasan should tell him if it had. Hasan told the Respondent that he did not know what he was talking about and that nothing had happened. The Respondent then went on to explain that he was "hearing that there's something going on involving an incident and something involved a girl and the only thing I could think of is you and me and the two girls. He was, like, absolutely not. Nothing, I told you. Nothing happened. So I spoke to him and Omar [Smith] after I had spoken with Tony [Hasan]. In my mind the only thing that came to mind was that's the only thing. I was in the place."

Bailey further acknowledged that the Respondent was asked whether he contacted anyone after being informed of the "possible 49" (DX 5) and the possible investigation taking place at the 6 Precinct to which he responded, "No." During that interview, the Respondent also denied calling the IAB command center or the 6 Precinct, but that he stated that he did inform his commanding officer when he went to work that morning. The Respondent further stated during that interview that he went "into Inspector Moore's office to see if there was something going on and to let him know that he heard a rumor. Nothing. I haven't heard many rumors about me in the Precinct. So I walked in and he says 'Oh, I'll be with you in a little bit.' That's when you guys came in. Maybe an hour or two later."

On cross-examination, Bailey stated that he started his investigation in this case on November 12, 2007, when IAB Group 9 was notified that a member of the Department might be involved in an incident following the investigation that Patrol started based on the 49 (DX 5). Bailey did not see this 49 until weeks after it was written. According to Bailey the 49, was the "first out cry involved in the case, prior to

IAB being notified," and there is no indication in the 49 that marijuana was smoked.

Bailey added that the 49 is, "just a brief synopsis of what happens and then this particular incident was mainly investigated by Internal Affairs." He acknowledged that the 49 is based on "the undersigned response to a radio run of past sexual assault" and also states that two witnesses were interviewed. One of the witnesses was Scher but Bailey stated that he did not know if the interviewer spoke to Papadatos.

SUMMARY OF 49 (DX 5)

The 49 states in relevant part:

1. On Sunday November 11, 2007 at approximately 1335 hrs the undersigned (Lieutenant John Seidl) responded to a radio run of 10-24 past sexual assault. Details are as follows:
2. At the above mentioned time and date, the undersigned, along with PO's Mulcahy...and Angelone..., both assigned to 6pct...responded to 50 E 8th St apt. 1P. They were informed by the Complainant...identity known to this department that she was out with her friend Amanda Scher...of the above address, drinking at various bars. She returned to Ms. Scher's apartment at approximately 0345 hrs. (the victim resides at Bayside, Queens.) Ms. Scher then phoned a male acquaintance, known only as "Dave" and invited him to her apartment. Both the victim and Ms. Scher were admittedly intoxicated. Shortly thereafter Dave responded with a friend, whose identity hasn't been established, and Dave retired with Ms. Scher to her bedroom leaving the victim alone in the living room with Dave's friend. The victim then alleges that Dave's friend forced himself on her, put on a condom and did rape her. The perp then abruptly stopped and fled the apartment. The victim states that while she was too intoxicated to effectively fight off the perp, she vividly remembers the incident. She further states that she did not notify police immediately because she was in fact intoxicated and would not be able to properly convey the details of the incident.

Bailey acknowledged that the 49 does not mention anything about anyone smoking marijuana and names the Respondent only by calling him "Dave." The identity of the man accused of rape was unknown at the time it was prepared. Bailey stated that

in the interviews that he conducted, he was told that the Respondent had left the apartment before the alleged rape took place.

Bailey further testified that he had a copy of the 49 when he interviewed the victim of the rape. He stated that during the interview, he did not say anything to them about their inconsistent statements from the 49. Bailey stated that in general, 49 reports are prepared by a supervisor after being told the facts of the case by the officers who respond to the scene of the crime. This particular 49 states that it was prepared by Lieutenant Seidl and that he was present at the interview. Bailey was not present for this interview or the drafting of the report, so he cannot say how things actually transpired that day. Rather, he can only speak about how such reports are created in general.

On the night that the 49 was prepared, the victim and complainant were re-interviewed by IAB. There was a call-out log generated by IAB at 10:11 p.m. on November 11, 2007, that states, "sexual misconduct, association, narcotics user." The call-out log names the Respondent as the subject, and it was sent from Detective Santos of the Manhattan Special Victims Unit to IAB. Bailey stated that the "obligation to report that somebody is under investigation" meant that the person should contact IAB and their commanding officer. Bailey stated that at that time that the Respondent heard about the rumors at the 6 Precinct, IAB already knew about what was going on based on the 49 (DX 5). He added that the Respondent did not know that IAB knew about the allegation.

The 49 was prepared at the 6 Precinct, which was where Smith was assigned. The only written document that was present at the 6 Precinct that Smith would have been able to see was the 49, which does not mention the Respondent by name. Bailey stated that Smith heard rumors at the precinct that the Respondent had raped someone and was

going to go to jail. Bailey testified that officers are not under an obligation to report rumors, but qualified his position by adding "depending on how serious the rumors are."

Bailey stated that after the Respondent found out about these rumors, he had phone conversations with Hasan. Bailey acknowledged that the Respondent stated during the Department interview that during a phone conversation with Hasan, he asked Hasan if anything had happened at the apartment after he left and Hasan told him that nothing had happened.

Bailey stated that it was his belief that when Smith contacted the Respondent, Smith told him that there was an investigation going on and that there were rumors going around the station house about the Respondent being involved in the rape. Bailey stated that the Respondent was not charged criminally and that he did not know why the District Attorney's Office declined to bring any charges against him. Bailey stated that all that he can testify to is that the 49 report is, "some sort of reflection of (the) initial interview with the witnesses," and that he was not present for the interviews with them.

Bailey first learned that marijuana had been smoked after his group took over the investigation from Group 9 on November 12, 2007. The interview with Scher and Papadatos took place approximately a month and a half later in December. Bailey stated that Papadatos claimed that all four of them were together in the room when the marijuana was smoked. He did not recall Scher stating that she and the Respondent went into the bedroom and while there, she smelled a faint odor of marijuana.

Bailey acknowledged that Scher stated during the interview, with regard to the Respondent being present during the time when marijuana was being smoked, "...to be honest...I really can't remember exactly when it was. I believe they were smoking later, because once they started, they were smoking and I went into my room and Dave

[Respondent] came into my room." She went on to say in response to a question about her knowing the difference between the marijuana and the cigarettes, "I'm just saying I didn't notice like exactly when they started. Because it smelled like cigarettes also....I don't even know what they were smoking. I think it might have been like a joint. Like a little joint or something. I don't even really know."

Bailey also acknowledged that during his interview of Papadatos, she stated in response to a question regarding Scher and the Respondent being in the same room when marijuana was being smoked, "Yeah they were there...they were sitting with us. We were all sitting there and chatting and Mor (Hasan) and I were just passing [it] back and forth between each other."

Bailey stated that based on the excerpts of the questions and answers of Scher and Papadatos, there were differences in the accounts between the two women.³

Bailey testified that he did not recall Scher and Papadatos indicating that they waited to report the incident because they wanted to sober up. Both of the women, however, did indicate that they had been drinking. According to the interview with Papadatos, she stated that she did not remember how she ended up in the bedroom with the Respondent and Scher, but that she was not dragged by her hair.

Bailey stated that the phone records obtained for the Respondent's cell phone show 21 calls, eight of which were less than 30 seconds and one which was 44 seconds. The rape was alleged to have taken place at sometime between 2 a.m to 4 a.m. on November 11, 2007, and the first response to the scene of the crime by anyone in the

³ Bailey stated that in other parts of her interview Scher confirmed that they were all in the room at the same time the marijuana was being smoked.

Department was at 1:35 p.m. on the same day. The 49 report makes no mention of marijuana being smoked.

On re-direct examination, Bailey testified that in addition to the 49, there was a Complaint Report prepared by Police Officer Ancelone of the 6 Precinct (DX 6). Bailey testified that after the 6 Precinct initially responded to the case, it was referred to Special Victims because it was a sexual assault allegation. Detective Santos from Special Victims received the case. There was also a Complaint Follow-up Report that had two pages, DD-5 No. 2 and DD-5 No. 5. (DX 7) Bailey stated that DD-5 No. 2 states that, "PO Mak informed me that of the two subjects involved in this case one is a member of this Department who worked at his command and is currently assigned to IAB office." Police Officer Mak is assigned to the 6 Precinct. DD-5 No. 5 states that, "on 11/11/07 at approximately 2145 hours I was able to confirm that Lieutenant David Dent is an active member of the New York City Police Department and is assigned to Internal Affairs Bureau and this report was prepared by Detective Santos from Special Victims." Bailey added that Santos notified IAB at some point after 9:45 pm.

Bailey testified that he listened to the first tape prior to interviewing the witnesses. Bailey stated that based on what he heard on the first tape, he went into more detail about the marijuana when interviewing the witnesses. Bailey stated that based on his investigation and interview with Smith, the Respondent should have notified someone in the Department about his being a subject of an investigation because there was more than mere rumors. Smith spoke to the Respondent at 11:57 p.m. on November 11, 2007.

Bailey stated, that based on the phone conversations that the Respondent was having that night and that he had knowledge of allegations or rumors against him at approximately 12 o'clock on November 11, he should have called someone to ask what

was happening, instead of waiting ten hours until the morning. Mak notified Santos at 5:15 p.m. IAB learned that a police officer was involved in the incident at approximately 11 o'clock. Santos ultimately notified IAB at 10:15 pm that a police officer was involved in the case (DX 7). The Patrol Guide states that once a member of the Department becomes aware of an allegation of misconduct, they must report it to IAB or their commanding officer.

On re-cross examination, Bailey stated that a rumor and an allegation could be the same thing, or they could be different. The Patrol Guide states that once you are made aware, you have an obligation to report. He did not know if the Patrol Guide defines, "allegation." According to the worksheet, Santos notified IAB that an officer may be involved in this case at 10:15 p.m. on November 11, 2007. This was after Santos spoke with Papadatos and Scher and after he identified the Respondent as being the officer involved with the case.

Bailey testified that he had no way of knowing how anyone at the 6 Precinct would have had knowledge that the "Dave" mentioned in the 49 was the Respondent. Bailey stated that during his interview with Smith, Smith mentioned that he read the 49 and heard other members of the Department discussing that the Respondent could be a subject of an investigation. Bailey did not ask Smith whether "anybody in law enforcement told him" that the Respondent was involved.

Summary of Interview of Elizabeth Papadatos⁴

On December 28, 2007, Bailey interviewed Papadatos via telephone. Papadatos

⁴ Papadatos elected not to appear at trial. An audiocassette and transcription of her interview was received in evidence as DX 2 and 2A.

stated that she was smoking marijuana the night that she was at Scher's apartment. She was smoking with Mor Hasan in the living room, next to the roommate's bedroom and indicated that the Respondent and Scher did not partake. She and Hasan shared a "blunt." Papadatos stated that the Respondent and Scher saw her and Hasan smoking as they, "were all sitting there and chatting" while she and Hasan passed the blunt back and forth. She noted that the Respondent was insisting that she dance with him and tried to get her to get up from the couch. Papadatos described the living room as having two couches together, forming a "u" shape. She sat on one couch with Hasan and they began to smoke marijuana as soon as they met. Additionally, they drank some beer, too.

Papadatos stated that she is not a regular marijuana user. She indicated that, "...people smoke all the time together. You know, like it's not like I was giving him like heroin, you know..." She also said she offered Hasan marijuana out of benevolence. Papadatos admitted that she was "high" at one point and stated that she gets paranoid. When the Respondent wanted to turn the lights off, Papadatos stated, "...I'm high and I'm paranoid. I don't want the lights off. I don't know you. I want them on."

After some of the lights had been turned off, Papadatos claimed that Hasan began rubbing her thigh and the Respondent attempted to get her to dance with him. When she asked the Respondent to stop, he temporarily did, but then he resumed trying to get her to dance with him.

Papadatos indicated that she was aware that the Respondent was a member of Internal Affairs and that Scher had known him for two years. She said she knew that the Respondent knew Hasan. She stated that she trusted the Respondent and Hasan to an extent. She reiterated that neither the Respondent nor Scher even touched the marijuana, although they were all in the same room. In fact, she offered it to them and both "refused

it flat out." Papadatos stated that she "got really high" after smoking a quarter of the blunt with Hasan and then "clipped" it, because it was too much. She left the remainder of the blunt in an ash tray.

At some point, the Respondent and Scher went into her bedroom. Hasan left to pick up food for him and Papadatos. Apparently, she also went to the bedroom, but she said, "to this day I do not remember how I got in there." She described it as "...like the peak, like not the peak it was basically like almost the peak of my beligerentness (*sic*) I guess you could say. I was I don't even know how many beers then at this point." She restated, "And when I went in the room, well, they went in the room. And I guess we all, I have no idea." In addition to kissing Scher, Papadatos said that the Respondent tried kissing her on the mouth as well, making Scher upset.

Papadatos stated that each time she tried to leave the bedroom, the Respondent would pull her back from leaving by grabbing her shirt or the waist band of her jeans. The Respondent then had sex with Scher, while attempting to put his hand down her (Papadatos) pants and attempting to suck her breasts. Eventually Papadatos left Scher's bedroom. She told Bailey that there was no mention of a threesome; she said she never would have discussed that, "ever in a million years..." When Papadatos felt the Respondent insert his hand in her pants, she pulled him away. She specified, however, that the Respondent's touching of her "wasn't forceful like [Hasan's] was. There's a difference. Like [Hasan] was forceful, like I don't care if you want it or not." She said the Respondent never put his hand in her vagina.

Papadatos said that Hasan returned to Scher's apartment about an hour after he left for food. He did not return until about 6:30 am. She said she continuously asked the Respondent where Hasan was because she did not want to be alone with him and Scher.

After he returned, they ate and then Papadatos said he "started this shit."

Hasan began to "feel on" Papadatos, attempting to insert his hands under her shirt and under her pants. Simultaneously, the Respondent left Scher's bedroom in a manner that Papadatos described as "storming out" and tossed Hasan condoms and left. Papadatos said she told Hasan he would not need the condoms because they would not be having sex. She felt that Hasan was using her own "insobriety" against her and attempting to make her feel crazy and that she was "seeing things." Papadatos learned the Respondent had a fight with Scher because she (Papadatos) was unwilling to participate in three-way sex, so he decided to leave and wait in his car for Hasan.

Papadatos told Bailey that Scher and the Respondent were not dating. She characterized them as "fuck buddies." She noted that in two years, the Respondent never kissed her. She recounted an instance in the past where the Respondent wanted three-way sex with another woman who was a sorority sister of Scher and Papadatos.

Papadatos stated that she had known Scher for three years and that they were sorority sisters together.

Summary of Interview of Amanda Scher⁵

On December 28, 2007, Bailey interviewed Scher via telephone. Scher stated that she and Papadatos returned to her apartment from being out at a bar. About 45 minutes to an hour later, the Respondent and Hasan came over, at around 3:30 or 4:00 am. They drank beer in Scher's living room and then Papadatos and Hasan smoked marijuana. Although Papadatos offered her marijuana, Scher said she declined. The Respondent and

⁵ Scher elected not to appear at trial. An audiocassette and transcription of her interview was received in evidence as DX 3 and 3A.

Scher then went into her bedroom.

Scher recalled that while they were in the living room, she sat next to the Respondent, while Papadatos and Hasan sat next to each other. She admitted that they drank beers together. While Papadatos and Hasan smoked marijuana, she and the Respondent retired to her bedroom. Before this, they had been in the living room all together for about 25 to 30 minutes. Scher did not know if Papadatos and Hasan continued to smoke marijuana after she and the Respondent went to her bedroom; they remained in the living room on the couch. Scher specified that she was not "really...ever dating" the Respondent. She stated that when the incident occurred, the Respondent was outside in his car.

In detailing the evening, Scher told Bailey that the Respondent and Hasan arrived at her apartment and they began drinking and "hanging out." At some point, Papadatos began smoking marijuana, but she did not notice the smell because people were smoking cigarettes as well. She stated that the Respondent was attempting to hit on Papadatos, but it was nothing that Scher said she would consider inappropriate. She said, "I mean, it was just, I mean we were all, I mean, everyone was drunk, kind of off and like dancing around...And she (Papadatos) wasn't really pulling back at all. She was just kind of like I'm not in the mood for this." Although Scher characterized the Respondent's gestures toward Papadatos as annoying, she said it was "by no means forceful." He wanted to dance with Papadatos. Scher said the Respondent was going back and forth between her and Papadatos. She did not recall when this happened in relation to Papadatos and Hasan smoking marijuana, but she believed once they began to smoke, she and the Respondent went to her bedroom. She reiterated that it was not very noticeable. Scher stated that the lights were off before the Respondent and Hasan even arrived.

Hasan and Papadatos remained on the couch when the Respondent and Scher went into her bedroom. At some point, Hasan left to get food and returned. In the interim, while waiting for Hasan to return, Papadatos came into Scher's bedroom and kept stating that she wanted a grilled cheese sandwich. Scher stated that Papadatos was "really intoxicated" at this point, from alcohol or a combination of alcohol and marijuana. When she entered the room, the Respondent told Papadatos to sit on the bed, which annoyed Scher. In essence, the Respondent told Papadatos to sit and watch him have sex with Scher. Scher did not see what the Respondent did to Papadatos, but she said that he kept saying, "oh, just come here. Come down here." At one point, he touched her arm. When Papadatos told the Respondent to "get off," he complied. She did not see the Respondent put his hands anywhere else on Papadatos. Eventually, Scher said she told Papadatos to "get the hell out of my room" and she left.

After Papadatos left, an argument "about stuff in general" ensued between the Respondent and Scher. This resulted in him leaving her room and the apartment and he went to sit in his car. Scher admitted that there was discussion about a "threesome." The Respondent had wanted to have three-way-sex for several months, but the evening of the incident, he did not mention it. Scher told Bailey that she made the plans for the evening through Hasan; she was aware that he was with the Respondent. Scher said she had met Hasan a "bunch" of times prior.

Scher told Bailey that she knew Papadatos from college. At the time of the interview, she said she still sees her although she is upset about what happened. As to the Respondent, Scher said she spoke with him a few weeks before this interview but she has not seen him since the incident. She has not spoken to Hasan. Scher specified that when she spoke with the Respondent, they did not discuss the incident. He did not ask about

Papadatos but he did mention that he had a problem with his job as a result of what happened. He did not ask for help. Scher did not know if the Respondent was still friendly with Hasan.

Scher stated that she felt it was "just shitty" that the Respondent got caught up in this situation. She said that what he did was not forceful and "the way the situation was is...I can't speak for him at all...but he was assuming that she (Papadatos) wanted to do, because she kept coming over there and sitting right there in the bed." She pointed out that the Respondent stopped what he was doing when Papadatos asked him to. Scher said the Respondent had one or two drinks at her apartment. She stated that she and the Respondent danced for about 25 to 30 minutes. She said she did not know if the Respondent was attracted to Papadatos.

Bailey asked Scher to detail the marijuana smoking again. She stated that this occurred in the living room, just prior to she and the Respondent going to her bedroom. She reiterated that she did not initially smell it, but said there was a faint odor of it at one point. Scher stated she did not remember Papadatos even offering her marijuana. She stated that the Respondent did not smoke and she was sure of this because he was next to her.

Sergeant Steven Cuomo

Cuomo, a 24 year member of the Department, has been assigned to the Housing Bureau Counter Terrorism Training Unit since June 2008. Cuomo stated that his duties there include overseeing, "the training, tracking, coordinating of the training for the Housing Unit." The specific units that are trained include the VIPER Unit and probationary police officers just out of the Academy who are newly assigned to the

Housing Bureau.

Cuomo stated that the duties of the video patrol officers are to, "monitor the radio, the cameras, they do two plate checks every hour on vehicles parked in the vicinity of the housing developments, they maintain the equipment make sure that it's operating." The duties of supervisors in the VIPER Unit are to, "oversee the officers that they're doing their duties and following Department policies and they also are involved in the recording of video footage, they oversee it or they actually do it themselves." Cuomo stated that it is also the duty of the supervisor to create, or supervise the creation of, any recordings of video footage that are made.

Cuomo testified that officers assigned to the VIPER Unit are trained on their duties and responsibilities including the operation of the equipment and procedures that should be followed. The training, is intended to make the officers more confident about operating the equipment and may not occur until several weeks after being assigned to the VIPER Unit. Thus, this training session will often clarify issues and answer questions that officers might have. The training lasts for four hours and officers are taught about the importance of the unit and shown actual footage of crimes captured on the system. Members of the service assigned to a VIPER Unit also receive training from their immediate supervisors or the Police Service Area (PSA) training sergeant.

Cuomo stated that there is a training manual, lesson plan and a Power Point presentation that is used in this course. Cuomo stated that officers will often ask other officers about how to do certain tasks if they are unsure how to do them. The Power Point slides were apparently shown at the training sessions attended by the Respondent and Santiago.

Cuomo testified that cycling refers to when a monitor moves from camera to

camera and that at the start of each tour the monitors should be set to cycle. Monitors should be set to cycle in order to maximize the points that officers are viewing. Viewing a large area is in line with what officers are taught at the Academy in terms of creating an "omni presence." If a monitor is not cycling, then it will stay focused on one camera view and will not shift away from it. If there is a problem with the monitor's cycling, then an incident report should be prepared and the Technical Assistance Response Unit (TARU) be contacted.

On cross-examination, Cuomo stated that when an officer begins their tour, they should check the system to make sure that the monitors are cycling. After the officer checks the system, the officer has the ability to stop the cycle and put the cameras on a fixed location. Cuomo stated that he oversees the training for the VIPER Units, but that at the time that the Respondent and Santiago were trained in 2007, he was not assigned to that position. Cuomo stated that he is not familiar with the training that the Respondent and Santiago received in 2007.

Cuomo testified that there are no machines to work with at the training sessions. Rather, they provide an overview about the theory of how the system works. In addition, it can be weeks and in some cases months before officers who are assigned to a VIPER Unit get this training. Cuomo stated that it may occur that there are officers who work at a unit before getting the formal training. Cuomo stated that there is nothing in the training materials that says that the system must be set to cycle, only that the officers must perform hourly checks of the equipment. The hourly checks involve making sure that each of the cameras are working properly and takes anywhere from three to five minutes.

Cuomo stated that if the officers working the system are told by a supervisor to fix the cameras on specific high crime areas, then they should do so. However, he did not know if officers, acting on their own, had the discretion to fix the cameras in this way he is not sure of the answer. Cuomo stated that most of the hands on training comes from other officers who are working the same tour as them and he has no way of knowing what these officers tell the others.

Cuomo stated that based on the language in the Patrol Guide, on the evening that the rape occurred, the Respondent, Santiago and Thelusma would have been viewed by "some desk officer at another location." However, Cuomo was not assigned to the Housing Bureau at that time and has no first hand knowledge of whether this actually happened. Cuomo stated that he believed that the language in the Patrol Guide was that, "any violations of Departmental policy procedures observed by the supervisor, that is the desk officer, will be immediately reported to the commanding officer." Cuomo stated that he was not aware of any report made by a monitoring officer about any infractions by the officers on duty that night. No such report was ever made.

On re-direct examination, Cuomo stated that while the Pelco keyboard is not used at the training, officers at the training are given a handout explaining how the system works. On the sides of the pages of the handout used, there is room for taking notes. Officers are taught how to operate the PTZ cameras and how to pause the system. The handout does not specifically mention cycling by name, rather, it just shows the key function features of the system. Cuomo stated that, "to pause the system, you would hit, you would press 100 Mac and that pauses the system and that's how you stop them from sequencing, cycling and you would either hit either 101 or 99 Mac on the system to get them to recycle. That's pretty much it with but the slides show (sic)."

Upon further questioning by the Court, Cuomo discussed the physical layout of a VIPER Unit, the number of cameras that it controls and what the officers should be looking for. Hourly checks should be done and any problems with any of the equipment should be noted in an incident report and TARU should be informed. If the monitors are not cycling, then the officers would have to report this. Cuomo stated that officers would pause a camera, "if a particular incident came up, say there was an incident, they have job came over the radio, you know, dispute in stairwell, now if they are at a particular location, now if they have a camera at that particular location they could bring that camera up and they can, it will stay on that one spot (sic)."

On re-cross examination, Cuomo stated that there are a multitude of reasons why an officer might freeze a camera on a certain location. Cuomo testified that pin maps, which show the locations of where crimes had occurred in the past, could be a useful tool for officers in determining where to focus more of their attention. Cuomo stated that he did not know if that was at the discretion of the officer or the supervisor. It is possible that the officer giving on-the-job training might say that this is what should be done but, "the system isn't solely designed for that purpose." PTZ cameras are used to zoom in and focus on license plates to run checks every hour and there is a log that is kept of this information. Cuomo stated that he did not investigate this case and did not know if the checks were done, or if there were any deviations noted in the log.

On re-direct examination, Cuomo testified that the system was a Close Circuit Television (CCTV) system and that it was designed to "monitor all the cameras by a police officer (in) real time to react to what he sees on these cameras." Therefore, the monitors should be, "set in a cycle mode to view all of the cameras to see if there are crimes going on, if someone needs assistance, quality of life issues, police assistance."

On re-cross examination, Cuomo stated that it was the policy of the Department that all of the cameras should be used and should be set to cycle, but that this was not memorialized in the Patrol Guide. As a result of this incident, the Department has changed its training procedures. Officers are now trained that, "the camera should be in cycling mode. It is also that they should have the authority of the commanding officer before they freeze a camera (sic)." Because of the lapse in viewing the monitors that occurred in this case, the Department tried to clarify the training procedures. Cuomo stated that he was not present for the training that these officers received.

Lieutenant Daryl Miller

Miller is a twenty eight year member of the Department and is currently assigned to the Housing Bureau Investigations Unit (HBIU), where he has been assigned for the past 15 years. Miller stated that it is his duty to investigate allegations of misconduct against members of the service assigned to the Housing Bureau. VIPER is an acronym for "Video Interactive Enhanced Patrol" and it is actually a CCTV system consisting of a series of pan, tilt, and zoom cameras (PTZ cameras). These PTZ cameras are in a fixed location, but they can move up and down, sideways and can zoom in and out. The cameras are placed around one particular housing development, in this case, the Van Dyke Houses. The term "VIPER Unit" refers to a central location where all of the cameras feed into various monitors and VCRs.

Each of the camera feeds is recorded on a VCR and the tapes in the VCRs are usually changed once each day. Every camera is being recorded even if it is not being viewed on a monitor. Officers assigned to the VIPER Unit have various tasks that they

are required to do. Some officers serve as supervisors. The main function of the VIPER Unit is to, "monitor the cameras so they are to look for say either crimes in progress, they are to look for wanted and suspicious person(s), any other violations, anything that might require police type incident(s)." The officers must also perform required checks each hour to ensure that the cameras are working properly and they keep a log of this information. Part of conducting these checks is to do two plate checks each hour, meaning to use the PTZ cameras to zoom in on a license plate for a vehicle parked in the development. For any cameras which are not working, or anything else that is malfunctioning within the VIPER system, a CCTV incident report must be filed.

Miller stated that a supervisor working in the VIPER Unit has to make sure that the officers are on their posts and monitoring the cameras. The supervisor checks all of the CCTV reports and also, "has a specific function where he is supposed to each tour do one half hour, like I said in this case, because it's video he would check one half hour of video and that will make sure that the cops are doing anything with the camera they are not supposed to do. So that the term I think is non-evasive but it basically, they look in a window that they shouldn't be looking, something that they are not supposed to be doing."

Miller testified that there are VIPER bases in each of the five boroughs and approximately 15 bases in all. The VIPER 7 base covers all of the Van Dyke Houses and has 224 cameras feeding into 12 large 20 inch monitors and 20 smaller 9 inch monitors. TARU determines which cameras are shown on which monitors. Officers sitting in front of the monitors are able to use controls to pick a particular monitor and put a particular camera feed into it. Miller stated that there would be two officers monitoring the monitors.

Miller stated that while VIPER does not offer much formal training, there is a one-day formal training that is offered by the Housing Bureau Training Unit (HBTU). This formal training is mostly for newly assigned officers and it normally lasts for one day. Miller testified that this formal training has not really changed since March of 2008 and that the HBTU still conducts it. Miller stated that while this formal training is in place, most VIPER training actually takes place within the VIPER Unit by supervisors. This on-the-job training, also known as "train the trainer," is how officers learn how to maneuver the cameras and what their responsibilities are. The formal training is not practical and is, "theory type training."

Miller stated that he checked the VIPER training records and they showed that as of March 6, 2008, the Respondent and Police Officer Carlos Santiago had completed the formal training, but that Police Officer Wilkens Thelusma had not. Out of the 32 monitors at VIPER 7, some were "fixed" and some were "cycling." Fixed monitors are those that are set to view a certain camera feed and do not change from that feed. Monitors are said to cycle when they rotate from one camera feed to the next in a repetitious manner. TARU sets which cameras feed into which monitors. Cycling, sequencing and rotating all refer to monitors. All mean the same thing and are used interchangeably.

On March 6, 2008, Miller was assigned to handle a case involving the Respondent and was told that a crime had occurred inside of the Van Dyke Houses. The crime was recorded on video and the officers assigned to the VIPER Unit missed the crime. The only officers working the VIPER Unit that night on the midnight shift were Santiago, Thelusma and the Respondent. The rape took place on that date between 1:18 a.m. and 1:50 a.m., on a stairwell of 375 Blake Avenue, within the surveillance camera's view. A

video taken at 1:15 a.m., shows the victim and the perpetrator on an elevator in the same building.

Miller testified that when he got involved in the case, he did an investigation of the Roll Call, the Command Log, the CCTV reports, the Complaint Report and the Unusual Occurrence Report. CCTV incident report number 31 VIPER (DX 12A) was prepared by Thelusma on March 6, 2008, at 6:45 a.m. This two page report gives details of the rape that took place in the stairwell of 375 Blake Avenue. The report states which cameras were captured on the video tapes. CCTV incident update 31B (DX 12B) was prepared by Officers Caminero and Paluga at midnight on March 7, 2008. It is reviewing the tapes that show the rape.

Miller then discussed the VIPER training log from November 28, 2007, (DX 12C) which indicates that the Respondent was present on that date for formal VIPER training. The VIPER base Roll Call document (DX 12D) shows that the Respondent, Santiago and Thelusma were all working the shift from approximately 10:00 p.m. on March 5, 2008, until approximately 7:23 a.m. on March 6, 2008. The VIPER command log (DX 12E) has stamps on it representing the hourly checks of the cameras that were done by the officers. It starts at approximately 1:00 a.m. and goes through approximately 8:00 a.m. on March 6, 2008. DX 12F is the complaint report that was prepared for the rape. The unusual occurrence report was prepared by Sergeant Gagliardi (DX 12G) and also concerns the female that was raped.

Miller testified that on the day of the rape, there were no malfunctions reported for any of the cameras. TARU has a default system in place by which each of the monitors cycles through different cameras and different views so that the person watching can best see suspicious individuals and crimes taking place. If this default

system is changed then some of the cameras will not be shown on the monitors as they are supposed to be. When the monitors are cycling, each monitor shows each camera view for about six to seven seconds before starting to cycle again. The monitors with the most camera views coming into them show 13 different cameras out of the 224.

If the monitors are not set to sequence properly then a CCTV incident report would need to be filled out, as well as notification to TARU and the Housing Bureau. Miller stated that it was his understanding that on March 6, 2008, all 32 monitors were fixed to individual cameras – not a single one of them was cycling. Thus, out of the 224 cameras that were set up, only 32 would have been visible on the monitors and 192 would not have been viewed.

Miller testified that the officers sitting in front of the monitors were about three feet away from the screens. Approximately two feet to the left of the two chairs that the officers sit in, is a supervisor's chair, which is where the Respondent was sitting on March 6, 2008. This supervisor's chair is approximately five feet from the monitors themselves. Beneath the monitors are video controls for the VIPER Unit as well as VCRs and other equipment. There is a VCR playback station which allows a person to take a recording from any one of the 224 cameras and turn it into a regular VCR tape that can be watched on a normal VCR.

As part of the criminal prosecution that occurred for this case, a DVD was created by taking different camera views which show the perpetrator and the victim together at various points leading up to and including the rape (DX 13). This is a composite of the various cameras showing the victim and perpetrator and it was made by using the VCR playback station to create a tape which was then converted to a DVD. It is not how the incident appeared on any of the monitors at the VIPER Unit. The DVD does not have

any sound.

The DVD video starts at 1:08 a.m. and everything that it shows took place in the area of the Van Dyke Houses. Sometimes the cameras will pan or zoom in and out, which they do automatically. It is possible that they were doing this as a result of human control, but it is impossible to know whether that was in fact the case. The video captures the entire rape on a fixed camera in a stairwell leading towards the roof landing. At 1:50 a.m., the video shows the perpetrator leaving the stairwell and at 1:51 a.m. the naked victim leaves as well. The perpetrator was not captured until the following day after he committed another rape.

Miller stated that there was an alarm that should have gone off during this incident. Normally this would have been a monitor alarm and an audio alarm, both of which would go off at the VIPER 7 base, but the audio alarm was broken. Miller stated that, "the audio alarm did not go back to the VIPER like it should have because TARU was there that day and fixed it."

The monitor alarm, which is triggered by movement on the stairwell, was working and went off. Miller stated that he saw that the monitor alarm worked when he viewed the VCR recordings. However, no one responded to the alarm. Because the monitors were all set to specific cameras and were not cycling, none of the monitors showed the camera on the stairwell. Had a member of the service observed the alarm, they would have been required to report it to 911 using the radio system.

On cross-examination, Miller stated that some of the officers assigned to VIPER Units were those on modified duty and who were waiting on trials. In this case, two of the monitoring officers were on modified duty. The responsibility to view the monitors rests with the two officers that are watching and controlling them. When they see

something wrong, one of their responsibilities is to inform the supervisor. Miller stated that there is currently a system in place whereby there are cameras in each of the VIPER bases that monitor the officers who are watching the monitors. He stated that he is not sure if that system had been installed at the VIPER 7 base on March 8, 2006, but even if it was installed, on that date it was not working.

Officers assigned to a VIPER Unit are supposed to receive formal VIPER training, however, as of March 6, 2008, Thelusma had not gotten this training. At the formal training sessions, which normally last for one day, officers are shown Power Point presentations about how to work the machines in the VIPER Unit. Miller stated that on-the-job training begins on the day that officers are assigned to a VIPER Unit and that if a monitor or a camera is locked, they would need to be shown how to fix it by somebody who knows how.

Miller stated that he never spoke to Thelusma, but he was aware that Thelusma stated in his official Department interview that he never got any training whatsoever in unlocking the machines and making the monitors cycle. Miller stated that on the day of the incident, Thelusma did license plate checks. After Thelusma got the information for a license plate, he had to take his eyes off of the monitors to run a license check. These checks are required to be done two times every hour.

Miller testified that he does not know what positions the cameras and monitors were in during the tour prior to the Respondent's tour on that night. However, he does not believe that the monitors were in the same position as they were during the prior tour because Santiago stated that he fixed the monitors to those particular cameras because he wanted to view those areas which he considered to be "high crime locations." On March 6, 2008, there were no written rules or regulations against setting the monitors in this

fashion. At that time, Santiago was not in violation of any rules for the VIPER Unit.

Miller stated that the bulk of training that Thelusma and Santiago received was on-the-job training and that he does not know what that actually consisted of. He stated that he does not know what they were told in regards to what they could and could not do. He stated that he does not know if they were told that it was proper to fix the monitors to high crime areas for an entire hour or not. Miller testified that he was not present at the formal training sessions that Santiago and the Respondent attended and so he could not say what they were told either. Miller stated that the VIPER Unit is a proactive patrol, so that if the monitors were only fixed on 32 cameras, this would not be proactive.

On March 6, 2008, there is a log that was made with respect to the functioning of the cameras. The log was filled out by Santiago and it states that all of the cameras were working, which meant that he either checked all 236 cameras to verify this, or he lied. Miller stated that he does not know if there was any indication in the Command Log that the officers went to lunch. There is no indication in the Command Log that Santiago or Thelusma stepped away from the monitors for any reason during the time that the rape occurred.

Miller stated that there were two alarm systems in the building at 375 Blake Avenue on the date of the rape. One was an audio alarm system that was triggered when the stairwell was entered. This alarm rang in the building itself, but did not ring in the VIPER 7 base like it was supposed to. The motion alarm on the camera in the stairwell is only set to go off on the monitors, not in the building. At the time that Miller viewed the VCR recording, the alarm on the camera did go off. However, in order to see the alarm, which consists of flashing lights, the monitor must be set to that particular camera.

Miller stated that the officers did not see the alarm go off because when an officer sees an alarm, they are required to file a CCTV report.

Miller testified that a CCTV report was not made at the time that the alarm was activated, but that one was made by Thelusma before the end of his tour. After the rape the victim ran down the stairs in the building and she dialed 911. When word of what had transpired came back to VIPER 7, Thelusma decided to look back over the tape. At this point it became apparent that a rape had taken place and a CCTV report was filled out. Up until this point, neither Thelusma nor Santiago reported to anyone that they had seen a rape.

Miller stated that there are buttons on the monitor controls that should be pushed if the monitors are fixed and need to be set to cycle. Miller stated that both Thelusma and Santiago claimed that they were never taught how to set the monitors to sequence once they were frozen. Miller stated that if the officers operating the monitors fixed them to view high crime areas, and were never taught how to put them back into sequence, the monitors would remain focused only on those areas.

At the time of the incident, section 212-98 of the Patrol Guide set forth the various duties of video patrol officers and video patrol supervisors (Respondent's Exhibit [RX] B). There was no written guide specifically for the VIPER Unit. Miller stated that there were also Housing Bureau memos that were in effect that go along with this section of the Patrol Guide. Miller stated that this section of the Patrol Guide requires the video patrol officers to do certain checks of the alarms, cameras and recording devices during each tour and to be familiar with the crime conditions in the area. The officers are also required to enter certain information into the Command Log, including the results of hourly checks on each of the cameras and recording devices.

During the officers' tour on March 6, 2008, Santiago made the hourly entries into the patrol log. Miller stated that the first platoon of the day is required to change the videotapes and that Santiago indicated in the patrol log that they did this task. Miller stated that if the officers noticed anything not working during their tour that they should have filled out a report and also have notified TARU. There were no notifications made for any of the equipment not working properly.

Miller stated that in Santiago's official Department interview, he said that he did the hourly camera checks of all 224 cameras and that they were all working properly. There was no indication that Santiago or Thelusma said anything to the contrary to the Respondent. In his official Department interview, Santiago indicated that he only used one monitor to do the check of the 224 cameras and that all of the other monitors stayed on their fixed locations. Miller stated that there is no way to use one monitor to do this. There is no documentation that Santiago left all of the other monitors on the fixed cameras, but that is what he stated in his official Department interview.

Miller testified that one of the responsibilities of the patrol supervisor is to prepare a CCTV Incident Report for crimes, violations and unusual police incidents. Miller stated that a CCTV report for the rape was written by Thelusma and signed by the Respondent. After going through the list of duties to be completed by the patrol supervisor, Miller stated that the Respondent complied with everything assigned to the patrol supervisor in the Patrol Guide. The Respondent met all of his supervisory duties on the day of the incident.

Miller stated that on page one of the video patrol section it discusses proactive video patrol and what that entails, but that it does not specify whose responsibility it is. Miller stated that he does not know if the Respondent received any written materials as to

his responsibilities prior to the date of the incident.

On redirect examination, Miller stated that it should have only taken about one minute for Thelusma to run license checks. Miller stated that while there are no written rules about the cameras being fixed, they should be cycled because that way they are being used in a more proactive way and can be used to view more locations. The system is designed to sequence through the cameras and if something is done so that they do not sequence, then this is a malfunction of the system.

Miller testified that there were no incident reports filed indicating that Thelusma, Santiago, or the Respondent did not know how to cycle the cameras. When a supervisor sees that 192 cameras are not being used then they should take action to determine why they are not sequencing. Miller stated that the Respondent would have been sitting approximately seven feet away from where the officers were sitting and would have been able to see all of the monitors. The rape was reported after it had already taken place.

Miller stated that he is familiar with the Van Dyke Houses and that they cover several blocks. Cameras and a VIPER Unit have been installed there because it has been an area with a lot of crime in the past. The 224 cameras that are present there cover every part of the development.

On re-cross examination, Miller stated that if officers are not taught how to sequence the cameras by the Department, then they cannot do their job. In this case, Miller does not know what the officers were told by their trainers in regards to leaving the cameras fixed on high crime areas. Miller testified that subsequent to the incident, officers started to be taught specifically how to put a camera back into sequence mode, but at that time they were not.

Miller stated that he did not know which fixed cameras were being viewed by the

officers and that he did not know if one of the fixed cameras was set to where the rape occurred and the officers were simply not paying attention. Miller stated that each VIPER Unit has a crime chart and pin map which show the location of where any of the seven different major crimes have occurred. Miller stated that he did not know what Santiago's rationale was for setting the fixed cameras to how they were fixed on the date of the incident. The area of the Van Dyke Houses was itself targeted as a VIPER area and it is impossible to say if certain areas within the Development were more high crime than others, because criminals could be committing crime anywhere.

On re-direct examination, Miller stated that if the cameras were cycling the way that they were supposed to, the rape would have been visible on a monitor at least ten different times, based on how long it occurred.

Police Officer Omar Smith

[Smith was the subject of an official Department interview conducted by Bailey. This interview was received in evidence as DX 2. Smith also testified at this trial].

Smith has been a member of the Department for approximately 11 ½ years and is currently assigned to the 84 Precinct. He has been assigned there for about 11 months. Smith stated that he knows the Respondent since he was his platoon commander at the 6 Precinct for approximately two years. Prior to his official Department interview on March 12, 2008, Smith stated that he spoke to the Respondent about two to three times a week, but that they have not talked since that date. Smith described his relationship with the Respondent during that time as both a supervisor and a friend and they would often meet up outside of work. Smith testified that he met Hasan through a friend of the Respondent and that he had known him for about a year. They spoke on the phone

infrequently and would sometimes meet up socially when the Respondent was present.

The last time that Smith spoke to Hasan was before his interview.

On November 11, 2007, Smith was working at the 6 Precinct and was assigned to a tour from 10:00 p.m. to 6:20 a.m. Smith stated that he was standing outside of the kitchen area of the Precinct at mealtime, when he heard different voices saying, "yea, Lieutenant Dent is a perp, he is a rapist, he raped that girl." These were other members of the Department saying this, but, Smith did not know who they were as he was standing outside of the kitchen.

During his tour that night, Smith stated that he saw a 49 report while sitting behind the desk at the 6 Precinct. Smith read the report and based on the gossip that he heard from other members of the Department, concluded that the "Dave" in the report was referring to the Respondent. Minutes after looking at the 49 report, Smith made a phone call to the Respondent. He had last spoke to the Respondent approximately two days earlier. Smith asked the Respondent if it was in fact him that was being investigated and he mentioned the 49 report and the gossip from the other officers. The Respondent told Smith that it was not him and that he was not involved in any sexual assault.

Shortly after speaking to the Respondent, Smith received a call from Hasan who sounded concerned, anxious and very nervous. Hasan told Smith that, "I didn't rape no girl, that didn't happen, this is nonsense, I didn't rape any girl" and, "[T]his is bullshit, I didn't rape any girl, this is nonsense." Smith stated that he did not recall specifically what he said to Hasan, but he did tell him about the 49 report. Smith stated that he spoke to the Respondent after getting off the phone with Hasan and informed him that he had spoken with Hasan.

In connection with this case, Smith was charged with disseminating Departmental

information and failure to notify of allegations of corruption or serious misconduct. This was based on his conversations with Hasan and the Respondent.

On cross-examination, Smith testified that his memo book states that he took his meal hour at midnight and that it was during this time that he overheard officers talking about the Respondent. Smith stated that when he heard them talking about his friend he went to confront them but that, "everyone was just quiet and they took a deaf ear to me" and that, "as soon as I came outside of the lunch room cafeteria kitchen the conversation ceased." Smith does not recall who these officers were, he only heard them talking outside of the kitchen and he did not see them talking.

After finishing his meal a little before 1 a.m., Smith walked around the desk area of the 6 Precinct and saw the 49 report referring to the incident. After reading the report, Smith called the Respondent and he does not know why the phone records reflect that he first called the Respondent at 11:57 p.m. Smith then testified that it may have been the case that this call at 11:57 p.m., to the Respondent, could have been to inform him about the rumors that were going around. This was before he found the 49 report. The Respondent responded to Smith that this was, "bullshit," and that the rumors were baseless. This is consistent with what Smith stated in his official Department interview.

During that initial conversation, Smith did not recall if he told the Respondent that there was an investigation going on about him. Smith stated that he was inaccurate during his initial Department interview when he claimed that he told the Respondent that there was a 49 report in regards to a sexual assault by a lieutenant. This is because the 49 report in no way reflects any sexual misconduct or rape by a lieutenant by the name of "Dave." In addition, there was nothing in the 49 report to indicate that the "Dave" in the report was the Respondent. Smith never told anyone in the Department that he believed

that the "Dave" in the 49 report was the Respondent. At the time that IAB interviewed him on March 12, 2008, Smith still believed that the 49 report was only rumors and innuendo.

Smith testified that if the phone records show that he made three phone calls to the Respondent during his shift the night of November 11 and 12, 2007, then that is correct. Smith stated that he was not sure when he first told the Respondent about the 49 report, but that he brought it up and not the Respondent. Smith stated that there is a difference between a rumor and an allegation and that during his entire tour he only heard rumors about the Respondent's involvement and was not aware of any allegations.

On re-direct examination, Smith stated that in addition to seeing the name "Dave" on the 49 report, he also saw reference to a building on 8th Street. Smith testified that he knew that the Respondent had a female friend who lived on that street. Smith stated that he never read the 49 report verbatim to the Respondent, but he did tell him what was on the report, which was a sexual assault. At that time, when Smith first found the 49 report, he believed that the "Dave" being referenced was in fact the Respondent.

On re-cross examination, Smith stated that he never told the Respondent that there was a 49 report referring to "Dave Dent," but only to "Dave."

Police Officer Wilkens Thelusma

Thelusma, a five year veteran of the Department, testified that he is currently assigned to Housing Bureau Bronx/Queens in VIPER Unit 11. He has been assigned to a VIPER Unit for two years. On March 6, 2008, he was assigned to VIPER Unit 7, and at that time he had never received formal VIPER training. The other officers who were in the VIPER Unit, "more or less guided me on daily activity." On the date of the incident,

Thelusma was working the 11:00 p.m. to 7:23 a.m. shift with the Respondent and Santiago. He and Santiago discussed what duties they would perform that day and they both agreed that Thelusma would do the plate checks and Santiago the camera checks. Plate checks involved using the PTZ camera to get the license plate number and to then run it in a database system to see if it was stolen.

During the tour that the officers worked on March 6, 2008, the Respondent was sitting approximately five feet away from Thelusma. Thelusma stated that there were 224 cameras and that it took about one or two minutes to check each of them. Checking the cameras involved looking at the monitor to make sure that the cameras were moving, panning and zooming properly. There were 32 monitors in VIPER Unit 7 and on the day of the incident, none of them were cycling. At the start of the tour, none of them were set to cycle.

At 2:00 a.m. a call came in on the police radio of an assault in progress and Thelusma began using the cameras to try to locate the perpetrator of the crime at 375 Blake Avenue. At that time, Thelusma stated that they were not able to observe any crime, but later in the night when they went back to review the tape, they saw the perpetrator take the victim from the elevator up the stairs. The actual rape occurred off camera. After viewing the tape, Thelusma filled out a report.

On cross-examination, Thelusma stated that on the date in question, he did not know how to make a camera cycle. Thelusma had joined the VIPER Unit in September 2007, so he had been in the VIPER Unit for six months without receiving any formal training. Thelusma only learned how to make the cameras cycle after attending the formal training, shortly after the rape took place. Thelusma stated that he was never taught anything about cycling or how to make the cameras cycle at that time, but that he

now knows how to make a monitor stop and then go back to sequencing, which is the same thing as cycling.

On re-direct examination, Thelusma stated that on the date of the rape, he knew how to fix a camera on a certain position, but he did not know how to restore it to cycling. When Thelusma viewed the tape later in the night, the Respondent was supervising him.

Police Officer Carlos Santiago

Santiago, a member of the Department since July 2005, has been assigned to PSA 6 for approximately a year and a half. On March 6, 2008, Santiago was assigned to VIPER Unit 7, where he served for approximately one year. His responsibilities at the VIPER Unit include overseeing the equipment to make sure that everything is working properly. Santiago stated that prior to the date in question, he had been trained both formally and informally in using the Pelco keyboard system to control the cameras and the monitors. The system controlled the cameras manually and also switched the camera views that appeared on the monitors.

On March 6, 2008, Santiago was working the midnight tour at VIPER Unit 7 with Thelusma and the Respondent. Officers Santiago and Thelusma discussed what their responsibilities were going to be during that shift and decided that Santiago would perform the equipment checks and Thelusma would perform the license plate checks. The Respondent never delegated these duties to the officers. Santiago made entries in the VIPER log of these checks which were conducted every hour. The equipment check involved making sure that all of the monitors were working, the VCRs were recording and the cameras were fully operational. If any of the 224 cameras were not working

properly, then TARU would be notified and an incident report filled out.

Santiago stated that he is familiar with the term "cycling" and knows what it means, but that on the day of the incident, the cameras were not cycling. This is because he was instructed that he had full control over what to look at, at any given time.

Santiago testified that it was explained to him that he could, "set it up however I felt necessary to witness crimes that day" and that "it was never explained to me that having a camera or not cycling was policy or not policy." Based on what he had been taught, Santiago thought that the cameras were set up properly.

Santiago testified that the Respondent was seated in the same room less than five feet away from him. It took Santiago approximately 10 to 15 minutes to conduct a check on all 224 cameras. Because 32 monitors were fixed on 32 cameras, 192 cameras were not being viewed. At 2:00 a.m., a call came in over the radio that there was an assault in progress at 375 Blake Avenue and Santiago set all of the cameras to view that location. However, he was not able to view the crime at that time. Once a supervisor arrived at the location and notifications were made, the tapes were rewound and viewed, showing the rape that took place.

Santiago testified that the monitors were set to view 32 cameras based on "[m]y personal knowledge of working in the command prior, I would just designate cameras to locations where I felt more crimes were taking place than others." He stated that this determination was based solely on his opinion and that it was not based on a Departmental policy that he followed.

On cross-examination, Santiago testified that another officer with more experience than him gave him on the job training and taught him how to set the cameras on a fixed location. During the formal training that he received, Santiago was never told

that he could not fix the cameras on areas that he thought were "high crime." During his on the job training, the other officer did not tell Santiago that he had "the discretion to fix the camera on a fixed location that you thought was a high crime area." However, Santiago stated that, "What is correct was that he told me I had control of the camera system, I was able to basically put cameras where I felt that there was crime...he basically stated that when you are on patrol you can set them however you want to set them."

Santiago testified that the officer that first trained him informally explained how to do the hourly camera checks. Santiago stated that he was in the VIPER Unit prior to the Respondent joining, but that he did not recall the name of his old supervising officer. Santiago stated that he knew that there was a camera watching the officers that were working in the VIPER Unit and that every officer knew that they were being watched. Santiago was never told by any of his supervisors that he was doing anything improper during the time that he worked in the VIPER Unit prior to the night of the incident. Santiago stated that it was common for officers on duty to divide the tasks of doing the plate checks and the equipment checks as he and Thelusma did that night. Santiago did not recall if any of the cameras were not functioning properly that night.

On re-direct examination, Santiago testified that he never cycled the cameras and his routines and habits were the same before and after the Respondent started working in the VIPER Unit.

Deputy Inspector Terrence Moore

Moore, a 25 year member of the Department, is presently assigned as Commanding Officer of the Brooklyn/Staten Island Internal Affairs Bureau. In that

capacity, he supervises internal investigations.

On November 11, 2007, the Respondent was one of Moore's subordinates. The Respondent did not make Moore aware of any allegation of misconduct that had been made against him that day, or any other day. Further, the Respondent never came to his office on November 12, 2007, a Monday, prior to the arrival of IAB Group 1.

On cross-examination, Moore affirmed that he has extensive experience with the rules and regulations of the Department. He acknowledged being aware of what a police officer is supposed to do regarding allegations of misconduct. As to the difference between a rumor and an allegation, Moore said that was difficult to say. Nevertheless, he agreed there was a difference between an allegation and a rumor, providing that "at some point or somehow you can determine the allegation only to be a rumor."

Moore was provided with several hypothetical situations and asked whether a police officer's responsibility to notify IAB would be triggered. He agreed that when a police officer is told of a rumor that another police officer "did something," that officer would be required to report it. Similarly, he believed that a number of officers discussing a rumor about another officer would be obligated to report that rumor. In the event that a police officer learned of a rumor that a friend, not a member of the Department, committed a rape, Moore testified that the officer should, at a minimum, notify the Detective Bureau. Asked if four officers told another officer that there was a rumor of a police officer being involved in a rape, Moore indicated that those four officers would be required to make a report to IAB. He asserted that everything is required to be reported. He claimed that determining whether something was founded or unfounded was the responsibility of IAB.

When provided with another hypothetical example of a police officer who learns

of a rumor that a person named John, unknown whether they are a member of the Department, committed an act of rape, Moore indicated it should be reported to "somebody." In the event that the officer who learned of the rumor was named John, Moore specified that the officer would not be required to report to IAB under those circumstances.

In response to the Court's inquiry, Moore specified that the Patrol Guide procedure for reporting allegations recently changed within the past year. Now, a member of the Department is required to report directly to IAB. Formerly, a member's reporting requirement could be satisfied by making the report to his Commanding Officer or IAB. He was unsure of the specific date when this procedure changed.

Moore affirmed that a police officer is required to report an allegation of corruption made against himself or another police officer. He claimed that rumors were also required to be reported. He testified that regardless of the allegation being a rumor or factual, it should be reported to IAB, who should "decipher from our investigation" whether or not it was an allegation or just a rumor.

On re-direct examination, the Assistant Department Advocate (the Advocate) posed a hypothetical situation to Moore, asking if a report to IAB would be required: if a police officer who heard a rumor that his friend, a lieutenant, was a "perp" and a rapist, and saw a 49 mentioning that friend's first name, whether telling his friend about the existence of the 49 and the rumor would mandate that individual to report it to IAB. Moore replied affirmatively. He also reiterated that IAB determines whether something is a rumor or an allegation.

On re-cross examination, Moore indicated that an officer would be obligated to report to IAB after reading a 49 and realizing that it may refer to another officer, even if

the person is identified only by first name in the memo. On the other hand, if the 49 simply contained a first name with no other information, Moore believed there was no obligation to report to IAB. Lastly, where a police officer tells another police officer of the existence of a 49 that has references the same first name as the second officer, he would have no obligation to report to IAB if he knew that he was not the person indicated in the memo.

Detective Michael Moore

Moore, a 22-year member of the Department, is assigned to the Housing Bureau. He conducts training for uniformed and civilian members of the service, including "VIPER" training. This encompasses a "class room instruction on the theory of how to utilize the equipment and the procedures." Moore has been conducting VIPER training since 2006, and on November 28, 2007, he was the instructor when the Respondent attended VIPER training. Additionally, he was the instructor on May 8, 2007, when Police Officer Carlos Santiago attended training.

Moore testified that he uses a lesson plan, student handouts and a Power Point presentation when he conducts training. Officers who attend the training also receive a student guide. The lesson plan and Power Point presentation used at the Respondent's training session were received in evidence (see DX 14, 15 and 16).

Officers who are assigned to VIPER observe camera monitors in order to identify crimes and violations. A supervisor in VIPER oversees officers to ensure that they are performing their duties properly. Additionally, only supervisors may copy tapes of VIPER incidents.

Moore acknowledged that he was familiar with the term "cycling," a term used frequently at VIPER bases. He understood this to be a reference to when the camera monitors go through phases by displaying each camera for a few seconds. Other terms analogous to cycling that are used are "motion" and "sequencing." Moore uses the term motion. Moore identified the Power Points in DX 15 and 16 and described the "command and control center" pictured, consisting of a keyboard for the officer to operate the monitors for the various cameras. It also allows cameras to be moved. Moore stated that there are keyboards in front of each officer. The middle diagram of the exhibit, titled "Matrix and Camera Control Buttons," allows an officer to use "quick key" buttons to move cameras and freeze or unfreeze screens. Moore testified that in order to freeze a camera, you press "100 Mac," which is a shortcut key.

Moore was asked by the Court to explain the cycling process. He testified that when an officer takes his post at VIPER, the cameras are typically cycling already. That means every couple of seconds, the monitors will display a different camera in a different location. If an officer observes an incident, pressing the "100 Mac" key will freeze the monitor from cycling. Moore stated that the officer would then press the "99 Mac" key to unfreeze the camera and continue cycling. He agreed that cycling means that the camera is automatically changing, and pressing the three buttons on the keyboard "9, 9 and Mac" cycle the cameras. On the other hand, "1, 0, 0 and Mac" will cease the cycling.

Moore was familiar with a procedure whereby non-VIPER personnel, specifically a desk officer, monitors the officers who are monitoring the cameras for officer safety purposes. On March 6, 2007, VIPER 7 did not have this capability.

At the beginning of an officer's tour, Moore stated that the monitors should already be cycling. They are configured that way by TARU. During the training that he

conducts, he stresses the importance of cycling and tells officers that they are supposed to ensure that cameras are cycling. Moore noted that when a subcontractor hired by the New York City Housing Authority to repair cameras completes work, they provide a list of cameras that they worked on. That list is placed on a clipboard for officers to see which cameras have been repaired. If an officer finds that the cameras are not cycling, Moore testified that they are to reactivate them and complete a VIPER incident report. In the event an officer is unaware of how to cycle a camera, Moore stated that they should ask a supervisor or fellow officer.

In response to the Court, Moore reiterated that entering "99 Mac" is all that an officer needs to know about how to cycle the cameras. If a camera is not cycling, then there is something wrong.

On cross-examination, Moore acknowledged that there are many reasons that may cause a camera not to cycle. He assented that an officer could manually freeze on a high crime area, but stated that the officer would be required to fill out a VIPER incident report if they observed an incident. Moore testified, however, than an officer is not allowed to freeze the camera on a location without approval from his commanding officer. He claimed that he taught that in his training, but admitted it was "not in the book" when asked where it appeared in his Power Points. Moore stated that he covers this regulation in his lectures when he teaches. The Respondent was not lectured regarding this regulation about freezing the cameras because it did not exist at that time. Until changes were made, Moore did not teach officers that they were not supposed to freeze cameras on what they believed to be high crime areas.

Moore affirmed that he conducted VIPER training for the Respondent and for Officer Santigo. He did not train Officer Thelusma. He agreed that officers were

assigned to VIPER units without first receiving training. Moore also agreed that neither Santiago nor the Respondent were told that they were not supposed to stop the cycling of the cameras. At the time that the Respondent was trained, the training amounted to the book in evidence. Other than an illustration of the keyboard, the actual device was not shown to the officers during training. Officers also received "on-the-job" training from fellow officers as to how to operate the cameras. Moore reiterated that formerly, he did not provide instructions that freezing the cameras was prohibited.

Moore agreed that the manual for VIPER training was changed, but disputed that it was because of this case. He testified that officers at various VIPER bases previously froze cameras on their own personal automobiles out of fear of vandalism. Now, a commanding officer's approval is required to freeze a camera. Moore said that he was never told that there was a deficiency in the training being provided to officers. He agreed, however, that the training was clarified so that officers would be instructed not to freeze the cameras.

Moore acknowledged that the 33 cameras all cycle at the same time, every three seconds. Thus, every three seconds, there are 66 different views on the cameras, and every nine seconds there are 99 views. He agreed that the Department expects two officers to monitor 66 different views every three seconds, and officers work a tour eight hours and 35 minutes long. He also agreed that there was a difference between freezing a camera and running a check to see if a camera was functional. He reiterated that at the time, officers were not trained not to freeze the cameras.

The Respondent's Case

The Respondent testified in his own behalf.

The Respondent

The Respondent is a 15 year member of the Department presently assigned to the Housing Bureau PSA 1. He has worked in a variety of different assignments, including as a sergeant and a lieutenant in the Internal Affairs Bureau. He has never been found guilty of any charges and specifications in his career.

On November 11, 2007, the Respondent was off duty. That evening, he met his friend Mor Hasan (Hasan) on 14th Street and 8th Avenue at a bar called Manor. Once he met Hasan, they decided to go to the residence of Amanda Scher. The Respondent explained that Scher attempted to call him but he did not receive her call. Scher called Hasan and made plans for he and the Respondent to meet her and her friend at her house. Scher's friend was also with her at her house.

Some time after 4:00 am, after the bar had closed, the Respondent and Mor arrived at Scher's house. They remained there for about an hour and a half. The Respondent denied that he smoked marijuana while there and denied that anyone in his presence smoked it. At some point, the Respondent and Scher went into a different room and had sex. At about 6:00 am, the Respondent said he left, went outside, and Scher followed shortly thereafter. Hasan remained in Scher's house with her friend. The Respondent explained that he left Hasan in Scher's house because he was trying to end his relationship with her. Even though he had sex with Scher, the Respondent claimed he did not want to be at her house and he wanted to leave. She followed him outside and attempted to convince him to stay. Instead, he went to his car where he fell asleep while

waiting for Hasan, who came outside over an hour later. The Respondent dropped Hasan off in Astoria, Queens and he took a cab home from there. While driving Hasan to Queens, the Respondent asked him what had happened and he replied nothing.

When Hasan left Scher's house, the Respondent said he had no indication that he committed a crime or raped or sodomized a woman. After dropping Hasan off, the Respondent went home, arriving between 9:00 am and 10:00 am. At around midnight, that same day, the Respondent received a phone call from Officer Omar Smith, a friend and his former RMP operator. Smith told the Respondent that he overheard some gossip amongst officers in the precinct, a rumor that the Respondent had raped someone. The Respondent asserted that he never raped anyone and he was never made aware of who he apparently raped or where it took place. The Respondent informed Smith that the rumor was "bullshit" and they concluded their phone call. The Respondent telephoned Hasan later on. He told him of his prior conversation with Smith. Hasan denied having any knowledge of a rape.

Later on, the Respondent had another conversation with Smith concerning a "49"⁶ prepared regarding the incident. Smith told the Respondent that he "heard that there was a 49 going around" which mentioned that "Dave was involved in an incident or a friend of Dave's was involved in an incident." After reviewing the document, in evidence as DX 5, the Respondent agreed that the 49 reflected that a friend of Dave's committed a rape. He reiterated that his initial conversation with Smith was that "Dave" committed the rape. The Respondent stated that it was not until he went to the Special Victims Unit to be interviewed did he learn that he and Hasan were the individuals referred to in the 49. He never made any notification to IAB that there was a rumor that he and Hasan

⁶ Departmental memorandum

were the individuals described in the 49.

The morning of the phone calls he had with Smith, the Respondent reported to work at about 9:00 am. No one from IAB was there to question the Respondent about the allegations. At around 10:00 am, IAB arrived at the Respondent's office and he had a conversation with Inspector Moore. Moore told him that Group 1 of IAB wished to speak with him and he asked the Respondent if he knew why they wanted to talk to him. The Respondent told Moore that he did not know but assumed it concerned "something involving a rape." Although Group 1 was present, the Respondent did not have a conversation with them. They told him that the Special Victims Unit wanted his help on the case and he proceeded there. The Respondent affirmed that even though IAB was present at his office, he never had a conversation with them. He proceeded to the Special Victims Unit in Upper Manhattan with IAB. On inquiry by the Court, the Respondent clarified that he made Moore aware of the rumors about he and Hasan, but he did not know if Moore shared those rumors with anyone else from IAB. The Respondent claimed that Moore did not tell him to make a report to IAB and claimed that he told him that he had "nothing to worry about", if he did not do anything wrong. When the Respondent asked if he needed representation, Moore told him that he did not and that he had no control over what his friends do.

Upon arriving at the Special Victims Unit, the Respondent informed them of what transpired the previous evening. It was at that time that he also learned that an allegation had been made against Hasan that he had raped someone. The Respondent heard of the allegation against his friend in the form of a rumor through a telephone conversation, the evening prior to the day he that met with Special Victims who confirmed it. As to the marijuana allegation, the Respondent was never informed or questioned regarding this

allegation until March.⁷

As a result of being modified from this case, the Respondent was assigned to the VIPER unit. He claimed to have received no formal training before being assigned there. Rather, he was trained by Officers Thelusma and Santiago. He agreed that even though he was a supervisory officer, he received no training whatsoever upon assignment to VIPER, save for some initial training from two police officers who monitored cameras. The Respondent agreed that one of those officers never received any formal training either. He also acknowledged that for about a month, he supervised officers who were teaching him the operations of VIPER.

The Respondent testified that although he attended formal VIPER training at some point, he was never taught that the cameras are supposed to be cycling at all times. Similarly, he was never told that the cameras were not allowed to be locked on specific areas. The Respondent was taught by officers in his VIPER unit that it was common practice for them to stop the cycling and freeze the cameras. He asserted that he was not taught anything to the contrary when he attended VIPER training. In response to the Court, the Respondent indicated that he was assigned to VIPER on November 13, 2007.

When the cameras are functioning properly, not locked, the Respondent stated that it is the responsibility of the VIPER patrol officer to ensure that the cameras are functioning properly. Only if they are malfunctioning does the officer prepare a report and present it to a supervisor for a signature. The Respondent testified that on the evening in question, March 6, 2008, no report was provided to him that any cameras were malfunctioning. Additionally, a log for that day reflected that the cameras were all in working order. At the time, the Respondent believed that the officers had the right to

⁷ The year is not specified in the record.

freeze cameras on any location they wished to.

On cross-examination, the Respondent acknowledged that he has been a lieutenant for five years. He agreed that based on his prior assignments in the Narcotics Division, he has a familiarity of narcotics, including the odor of marijuana in both raw and burnt form.

On November 11, 2007, the Respondent acknowledged that he was assigned to IAB Group 34 where he had been for about five months. Previously, as a sergeant, he was assigned to IAB for about three years. He agreed that he was familiar with the rules and regulations of IAB. That day, he was off-duty and went from his house in Long Island to Manhattan to pick Hasan up. At that time, he had known Hasan and Scher for about two years. The Respondent affirmed that he had an intimate relationship with Scher. When he arrived at her apartment, her friend, Elizabeth Papadatos was also present. He was unsure if he had met her before.

The Respondent recalled that he had been at Scher's apartment more than 20 times before and knew the layout of her apartment. He described it as a two bedroom apartment in the West Village. To the left of the entrance was the living room and a "pretty sizeable bedroom" off of the living room, followed by the kitchen. There was also a bathroom adjacent to the kitchen, and a "big bedroom" that Scher used. The Respondent said that Scher's bedroom was further from the living room than the other bedroom and he disputed that the apartment was small. He guessed that each room was about ten by ten in size.

Upon arriving at Scher's apartment, it was dark. Scher opened the door and Papadatos was seated on the couch in the living room. He acknowledged that he mentioned in his official Department interview that Papadatos remarked that she smoked

marijuana and was aware that he was a lieutenant and “[didn’t] give a shit...” The Respondent denied telling Papadatos that he did not care; he told her, “that’s your business as long as you don’t do it in front of me...” He specified this issue first came up when he spoke to the Special Victims Unit. The Respondent testified that Papadatos was singing and “doing a lot of rapping”, when she mentioned that she smoked marijuana.

Eventually, the Respondent and Scher sat on one of the two couches together. Hasan and Papadatos sat on the other. The four of them drank beer and then danced in the living room. The Respondent admitted that he kissed Scher and Papadatos. After about a half hour, when they were finished dancing, the Respondent and Scher went into her bedroom. The Respondent testified that he followed Scher into the bedroom and Papadatos followed him. He agreed that he had sex with Scher and reiterated that he wanted to end his relationship with her. The Respondent restated that after having sex with Scher, he left the apartment and fell asleep in his Department vehicle outside. Once Hasan came outside, he drove him to the train station in Astoria, Queens.

The Respondent testified that he last spoke with Scher about seven or eight months prior to testifying in this case. He claimed that he has no bad feelings toward her and they ended their relationship amicably. He last spoke with Papadatos on the night of November 11, 2007, and said he has no bad feelings toward her either.

With respect to Officer Smith, the Respondent acknowledged that he had a close, personal relationship with him. It was through Smith that the Respondent knew Hasan. He acknowledged that Smith told him that officers at the 6 Precinct were mentioning that he was involved in a sexual assault and the Respondent said Smith seemed concerned. Next, the Respondent telephoned Hasan to ask if something had happened that he was unaware of. He subsequently fell asleep, prior to 2:00 am. The Respondent then reported

to work at around 9:00 am. He made no notification to his commanding officer between 2:00 am and 9:00 am. When he reported to work, he went to Inspector Moore's office. Despite stating in his official Department interview that he went to tell him about the rumors, he denied that was his sole purpose. The Respondent indicated that as the administrative lieutenant at his command, it was a typical occurrence for him to go to Moore's office. When Moore did not mention anything to him, it "alleviated [his] concern." He did not mention the rumors at that time.

About an hour later, Moore informed the Respondent that IAB had arrived and he wanted to know what was going on. That was the first time that the Respondent mentioned the rumors. He reiterated that he did not make mention of it during the previous visit to his office. The Respondent did not feel there was anything to notify Moore about at that time.

With respect to his assignment to VIPER, the Respondent affirmed that he was working on March 6, 2008, from 11:00 pm to 7:33 am. That day, he was supervising Officers Thelusma and Santiago, who were the only members working during that tour. The Respondent was the only supervisor in the room at that time. He testified that his assignment to VIPER began on November 13, 2007, and he was sent to formal training on November 28, 2007. He reiterated Thelusma and Santiago trained him on the use of the "Pelco" keyboard before he was sent to training.

The Respondent affirmed that officers assigned to VIPER are responsible for performing certain equipment checks. One purpose of the check is to ensure that the cameras are functioning properly. The Respondent admitted that had he been asked to perform an equipment check on March 6, 2008, he would have known how to do it. Confronted with his response in his official Department interview that he had "no

intricate knowledge" of how to perform the check, the Respondent maintained that was accurate. He explained that he was unfamiliar with the freezing functions, which is part of the equipment check. He was aware of how to press the forward key on the keypad to look at different cameras, which he considered a basic equipment check that he was familiar with on March 6.

The Respondent agreed that police officers assigned to VIPER are supposed to perform two license plate checks per shift. Although he asserted that this was not his function, the Respondent recalled that this entailed zooming in on a plate and calling the PSA or querying a "Q-Tech" device to look up the plate. He believed he knew how to perform these checks on March 6.

With respect to the "cycling" of cameras, the Respondent admitted that he was aware that the term referred to a monitor showing different cameras. He maintained that he was not taught how to press "9, 9 Mac" and claimed that he did not know how to cycle cameras on March 6, 2008. The Respondent was unaware if Thelusma and Santiago knew how to cycle cameras on March 6, and he agreed that he did not prepare any 49 that day about cameras not cycling. Additionally, no incident reports were prepared that day for malfunctioning cameras.

The Respondent asserted that for part of the day on March 6, the cameras were cycling. The cameras were not fixed for the entire tour. He agreed that during the incident relating to the charge against him, the cameras were fixed. The Respondent testified that cameras in VIPER are not fixed for an entire tour. He stated that an officer who wishes to concentrate on a particular area may lock cameras at his discretion and watch them for a period of time. The Respondent agreed that on March 6, before the rape, the system was fixed to 32 cameras.

VIPER 7 has 32 monitors and about 224 cameras. The Respondent reiterated that he never learned how to cycle the cameras in his three-and-a-half months assigned to that command. He testified that the cameras are able to pan, tilt and zoom ("PTZ") on their own. A camera in its normal operation pans and tilts and an officer may zoom in or out. An officer may also stop the camera from functioning normally.

The Respondent indicated that he did not tell his subordinates what to do on March 6, 2008. He stated that his officers knew what their job was. He did not specify to Santiago and Thelusma what cameras they should view, but noted that on some occasions, they would review complaint reports and pin maps of crimes to focus in on specific areas. He recalled doing this on March 6, but asserted that the 32 monitors were not fixed for the entire tour. He agreed that if 32 views were locked and being watched, then 192 were not being viewed at that period of time. In response to the Court, the Respondent said he was aware that his officers were only viewing 32 cameras, but he claimed that was what he had been taught was done. He said, "...I didn't know what to teach them, they were teaching me."

When asked why he did not call TARU for help, the Respondent said he did not need help. He countered that he did not know what "cycling" was and could not have asked for help on an issue that he did not know existed. The Respondent said he believed it was alright to watch 32 cameras for a set period of time in a high crime area even though the development had over 200 cameras.

The Respondent admitted that he did not learn that a rape occurred until a radio transmission came in. Neither he nor his officers observed the rape, although it was recorded.

FINDINGS AND ANALYSISDisciplinary Case No 84014/08Specification No. 1

The Respondent is charged with the forcible touching of the sexual or other intimate parts of a female. On October 27, 2009, this specification was Dismissed on an application made by the Assistant Department Advocate where new evidence revealed that the sexual contact was consensual.

Specification No. 2

The Respondent is charged that after having observed or after being made aware that individuals in his company were using marijuana, he failed and neglected to take proper police action.

Papadatos, Scher, Hasan and the Respondent were all present at Scher's apartment on November 11, 2007. Marijuana was smoked during the time that the Respondent was there and the issue is whether he was present in the room when it was smoked or if he was aware that marijuana was being used while he was there.

Hasan did not appear at trial and there was no prior interview of him pertaining to this issue. Papadatos and Scher also did not appear to testify at this trial but they were both interviewed by telephone on December 28, 2007, by Bailey and their interviews were recorded and were received into evidence and made part of the trial record.

At the outset, both Papadatos' and Scher's statements are hearsay. While hearsay is permitted in this forum, it must still be considered reliable. One factor in determining reliability is whether the hearsay statements are corroborated by additional reliable evidence. Here the Court learned that both Papadatos and Scher were out drinking

alcohol prior to going to Scher's apartment. Once at her apartment, they continued to drink and by her own admissions, Papadatos smoked marijuana and was affected to the point where she did not remember how she got from one room to another.

With regard to the Respondent being in the same room when Papadatos and Hasan were smoking marijuana, Papadatos stated that he and Scher were sitting on a couch when Papadatos and Hasan were passing a "blunt" (marijuana cigarette) back and forth to each other while they were all sitting and chatting. She stated that she offered the marijuana to them but neither the Respondent nor Scher smoked the marijuana. Papadatos associated the Respondent being in the room with the marijuana by him wanting to dance with her: "Okay, okay, I actually can, okay, remember how I said that he (Respondent) kept trying to pull me off, asking me to dance with him?...Yeah, like I was like it was right—that was when we were smoking. So he was in the room with us." At one point, according to Papadatos, the Respondent and Scher went into Scher's bedroom: "They went into the bedroom. Um, I still to this day do not remember how I got there. I said that from the beginning. I was it was like the peak, like not the peak it was basically like almost the peak of my belligerentness I guess you could say. I was—I don't even know how many beers then at this point." (DX 2)

Scher in her interview with Bailey was not sure about her and the Respondent being in the room with Papadatos when the marijuana was being smoked. She was adamant about smelling cigarette smoke which annoyed her because she does not allow smoking in her home.

Scher stated that the four of them were drinking in the living room. At first she said that "Liz took out marijuana and was smoking. And Moore (Hasan) was smoking with her also. At that point Dave (Respondent) and I went into my room."

She stated the Papadatos "offered it to me...I mean she knows I don't smoke. I don't really remember. And then, at that point, after Liz and Moore were smoking, Dave and I had gone into my room."

When Scher stated that she was in the living room for approximately 25 minutes, Bailey asked her "And then during that time...Liz and Moore were smoking weed right? Scher replied "Well, they that was towards the end of it. They didn't take that out until later. Because Dave and I were in my room. And the two of them were out there. I mean, I don't know if they continued to smoke. I know they ordered food."

Scher went on to say, "I mean they got to my house. We started drinking. And all just hanging out. At some point, not as soon as I got there, but at some point, Liz took out weed. And I didn't even really even notice at first. So when you ask me if she offered, I mean, I don't even recall that. I just know the—And people were smoking cigarettes also. So I didn't even really notice." When Bailey asked "You didn't notice the smell?" she replied "No, not even really...I mean not right away. Because there were cigarettes being smoked also. And I was out all night smoking cigarettes. Smoke was on me, you know?" Um, Liz was smoking cigarettes and Moore was smoking cigarettes. When Bailey asked if they were smoking weed during the dancing Scher replies "Um, I really, to be honest, I really I can't remember exactly when it was. I believe they were smoking later, because once they started, they were smoking, I went into my room and Dave came into my room. She went on to say that she did not know exactly when they started smoking the marijuana, "Because it smelled like cigarettes....It really wasn't noticeable. It was just like, I don't even know what they were smoking. I think it might have been like a joint, like a little joint or something. I don't even really know." (DX 3)

Based on their statements to Bailey, while Papadatos seems certain that the

Respondent was present while she was smoking marijuana, she nevertheless had been drink extensively, smoking marijuana and admittedly could not remember how she got from one room to another.

Scher, in contrast, seemed to remember marijuana being smoked in her presence but as she tried to further explain she cast more doubts as to what was being smoked, cigarettes or marijuana, in her and the Respondent's presence. In the end, she did not and could not confidently say that marijuana was smoked in the Respondent's presence.

When Scher's uncertainties are coupled with the Respondent's testimony that marijuana was not smoked while he was in the apartment, it leaves this Court with very little corroboration to support Papadatos hearsay statements and as such this Court cannot give weight to her account of what occurred.

Accordingly, the Respondent is found Not Guilty of Specification No. 2.

Specification Nos. 3 and 4

The Respondent is charged with wrongfully utilizing a Department vehicle for personal transportation (Specification No. 3) and wrongfully transporting an unauthorized civilian in a Department vehicle (Specification No. 4).

The Respondent plead Guilty to these specifications and is therefore Guilty as charged.

Specification Nos. 5 and 6

The Respondent is charged with after becoming aware of an allegation of misconduct in which his involvement was alleged; he failed to notify his commanding

officer or the Internal Affairs Bureau as required. The Respondent is also charged with after becoming aware of a criminal allegation made against a civilian acquaintance; he contacted said acquaintance and wrongfully divulged or discussed official Department business without permission or authority to do so.

Smith testified that he heard members of the Department talking in the kitchen area saying "Yea, Lieutenant Dent is a perp, he is a rapist, he raped that girl." During that tour, Smith also came across a Department 49 (DX 5) that gave the date, November 11, 2007, the name of "Dave" a male acquaintance of Amanda Scher and Scher's home address. It also states that Dave's friend forced himself on Scher's friend and raped her.

When Smith read the 49 he was also reminded of the talk he heard by the members in the kitchen and immediately believed his friend, the Respondent, was involved in what the 49 stated. Smith then called the Respondent and asked him if he was in fact being investigated as mentioned in the 49 and the subject of the member's conversation. Smith stated that the Respondent told him that it was not him and that he was not involved in any sexual assault. Smith then received a call from Hasan who sounded very nervous and told Smith that he "didn't rape no girl...." Smith told Hasan about the 49. Smith then called the Respondent and told him that he had spoken to Hasan.

Smith could not recall if he told the Respondent if there was an investigation going on that involved him. In addition to seeing the name "Dave" in the 49, he also saw the reference made to the address of the building in the 49, which was Scher's address. He stated, however, that he never read the report verbatim to the Respondent, but he did tell him what was on the report. Even Smith, after reading the 49 believed that "Dave" was referring to the Respondent.

The Respondent acknowledged that his friend Smith called him and told him that he overheard gossip amongst the officers in the stationhouse that he raped someone. The Respondent told Smith that he did not rape anyone and the rumors were "bullshit" and ended their phone call. At another point, Smith again called the Respondent and had another conversation regarding the 49. He stated that Smith told him that he "heard that there was a 49 going around" which mentioned, "Dave was involved in an incident or a friend of Dave's was involved in an incident." The Respondent also called Hasan and told him of his prior conversation with Smith and Hasan denied any knowledge of a rape. The Respondent did not notify the Department concerning the information contained in the 49.

In this Court's opinion, when the Respondent received the call from Smith informing him of the Department's 49, it was at that point when he had to notify his commanding officer or IAB. While Smith stated that he did not read the 49 verbatim to him, the evidence establishes that Smith, a friend of the Respondent's, told him that the 49 contained the name of Scher, the Respondent's girlfriend, her address, the date that they were all together and a reference to the two other people present at that time, which the Respondent knew. The Respondent had to know that the "Dave" mentioned in the 49 was referring to him and the friend had to be Hasan. If he did not suspect that the friend of Dave's referred to in the 49 was Hasan then why call Hasan and ask him if he was involved in a rape.

The facts in the 49, a Department memo, were not rumors, but serious allegations concerning a rape. The Respondent who had to know he was the Dave in the 49 was required to notify the Department and tell them what he knew concerning that night. In addition, when he called Hasan and questioned him about a possible rape he was in fact

letting him know that the Department was investigating allegations of a rape that Hasan possibly committed.

Accordingly, the Respondent is found Guilty of Specification Nos. 5 and 6.

Disciplinary Case No. 84826/09

The Respondent is charged with wrongfully failing to supervise other members of the service under his supervision on March 6, 2008, in that he failed to ensure that VIPER Unit video monitors were properly functioning resulting in his subordinates failing to observe a violent crime in progress on an upper floor of the Van Dyke Houses.

The Respondent was a supervisor in VIPER 7, on March 6, 2008. On that day the officers under his supervision were Santiago and Thelusma. According to the Department, their job, in part and relevant to this case, was to monitor VIPER 7's video monitors to ensure that they were properly set to "cycle", in order to maximize the large areas they were designed to cover.

Cuomo, who oversees the training for the VIPER Units, explained that cycling (also known as sequencing), refers to when a monitor moves from camera to camera and that at the start of each tour the monitors should be set to cycle. If a monitor is not cycling then it will stay focused on one camera view and will not shift away from it. If there is a problem with the monitor's cycling, then an incident report should be prepared and TARU contacted. When officers begin their tour, they should check the system to make sure the monitors are cycling. The officer also has the ability to stop the cycle and put the cameras on a fixed location.

While Cuomo is in charge of training, he was not in this position at the time the Respondent was trained. He did say that under the training methods that he is familiar

with there are no machines at the training sessions. Rather, an overview about the theory of how the system works is provided. He noted that it can be weeks and in some cases months before officers who are assigned to VIPER get this training. He added that there is nothing in the training materials that says the system must be set to cycle, only that officers must perform hourly checks of the equipment. The hourly checks involve making sure that each of the cameras are working properly.

Cuomo also stated that most of the hands on training that takes place in VIPER, comes from fellow officers who are working the same tour as the officers being trained. Cuomo admitted that he has no way of knowing what the officers are telling each other by way of substantive training.

Cuomo explained that to "to pause the system", you would press "100 MAC" on the "Pelco keyboard" and that is how you get the system to stop sequencing or cycling and to get them to cycle again you would need to press "101 or 99 MAC." The reason for an officer "pausing" a camera is when there is an interest in a particular location such as a stairwell where a crime may be unfolding, then that camera can be made to remain on that location.

Cuomo further stated that the system of monitors and cameras is designed to monitor all the cameras by a police officer in real time to react to what he sees on these cameras. According to Cuomo, while it is not specifically stated in the Patrol Guide, it is the policy of the Department that all cameras should be in use and set to cycle.

Subsequent to the rape incident of March 6, 2008, the Department changed its training procedures and officers are now trained that the camera should be in cycling mode.

Miller, who investigates misconduct by members in the Housing Bureau, gave a

more detailed explanation of how the VIPER monitors and cameras operate and the extent of the training that Housing members received to operate the equipment at the time when the Respondent was assigned to the VIPER Unit.

Miller informed the Court that VIPER is actually a CCTV system consisting of a series of pan, tilt, and zoom cameras (PTZ cameras) that are in fixed locations. These cameras, have the ability to move in different directions and in this case are placed in the Van Dyke Houses. The cameras feed into various monitors and VCR's. The camera feed is recorded on a VCR and the tapes are usually changed once a day. Every camera is being recorded even if it is not being viewed on the monitor. The main function of the VIPER Unit is to monitor the cameras to look for possible crimes, suspicious people and any other violations.

VIPER 7 has 224 cameras feeding into 12 large 20 inch monitors and 20 smaller 9 inch monitors. (See DX 8) TARU determines which cameras are shown on which monitors. Monitors can be set in a fixed position or in a "cycling" position. Fixed monitors are set to view a certain camera feed and do not change from that feed. Monitors that are set to cycle rotate from one camera feed to the next in a repetitious manner.

According to Miller, on March 6, 2008, when the Respondent, Santiago and Thelusma were working, all of the 32 monitors were set in the fixed position to individual cameras meaning they were covering specific cameras feeds and were not cycling to cover others. He explained that out of the 224 cameras only 32 would have been visible on the monitors and 192 would not have been viewed. Consequently, while surveillance cameras covering the area where the crime was committed, captured and videotaped the crime, the incident did not appear on the monitors in the VIPER room and the

Respondent and the two officers on duty could not take any action to prevent or stop what was taking place.

Miller did not know what positions the cameras and monitors were in during the tour prior to the Respondent's tour that night. But he does not believe that the monitors, at the beginning of the Respondent's tour, were in the same position as the prior tour because Santiago stated that he fixed the monitors to particular cameras because he wanted to view those areas which he considered "high crime locations." Miller noted that on March 6, 2008, there were no written rules or regulations against setting the monitors in this fashion and Santiago was not in any violation of any rules for the VIPER Unit.

Miller acknowledged that VIPER does not offer much in terms of formal training. The one day of formal training that is given is mostly for newly assigned officers and has not changed since March of 2008. The formal training is not practical and is "theory type training." Most of the training consists of on-the-job or from one officer to another during their work tours. Miller was not present at the formal training that Santiago and the Respondent attended, so he could not say what they were told. Both Santiago and Thelusma claimed that they were never taught how to set the monitors back to sequence once they were frozen on a specific camera location. He added that if officers fix the monitors to view high crime areas and were never taught how to put them back into sequence (cycle), the monitors would remain focused only on those areas. In this case, Miller did not know if the officers were taught by their teachers with regards to leaving the cameras fixed on high crime areas. Subsequent to the incident of March 6, 2008, officers are now being taught specifically how to put a camera back into sequence (cycle), but at that time they were not.

Moore, who had conducted VIPER training since 2006, instructed the Respondent and Santiago. Moore explained that when an officer takes his post at VIPER, the cameras are typically cycling already. That means that every couple of seconds the monitors will display a different camera in a different location. He also told the Court that to freeze a specific location the officer needs to press "100 Mac" key stopping the cycling process and to unfreeze the camera the officer needs to press "99 Mac" key.

Currently, an officer is not allowed to freeze a camera on a specific location without his commanding officer's permission. This is a regulation that Moore now covers in his lectures. When the Respondent was lectured on camera use, however, the regulation about freezing the camera was not a topic because it did not exist at that time. Until changes were made, Moore did not teach officers that they were not supposed to freeze cameras on what they believed to be high crime areas. Moore acknowledged that the Respondent and Santiago were never told that they were not supposed to stop the cycling of the cameras.

Thelusma stated that on March 6, 2008, he was assigned to VIPER 7 and at that time he had not received formal training. The officers in the unit "more or less" guided him on daily activities. On that day, Thelusma stated that none of the cameras were set to cycle and he did not know how to make a camera cycle. He knew how to fix a camera to a certain position but did not know how to restore it to cycle. At that point in time he had been at VIPER for six months and still had not received formal training. He only learned how to make them cycle during his formal training subsequent to the rape incident of March 6, 2008.

Prior to March 6, 2008, Santiago had been trained both formally and informally in using the Pelco keyboard system (See DX 8) to control the cameras and the monitors. He

stated that he knows what "cycling" means and on the incident date the cameras were not cycling. He did not believe that there was anything wrong with the way the cameras were set up because it was explained to him that he could set up the cameras, "however I felt necessary to witness crimes that day" and it was never explained to him "that ...not cycling was policy or not policy." He stated that the monitors were set to view 32 cameras based on "my knowledge of working in the command prior, I would just designate cameras to locations where I felt more crimes were taking place than others."

The Respondent stated that he received no formal training when he was assigned to VIPER on November 13, 2007. His initial training was provided by Thelusma and Santiago and other officers under his supervision. Once he was given formal training on November 28, 2007, he was not taught that cameras are supposed to be in cycling at all times. Similarly, he was not taught that cameras were not allowed to be locked on specific areas.

He noted that he was taught by the officers in the unit that the common practice was to stop the cycling and freeze the cameras. On March 6, 2008, all the cameras were in working order and at that time he believed that the officers had the right freeze cameras on any location they wished to. With respect to "cycling" of cameras, the Respondent admitted that he was aware that the term referred to a monitor showing different cameras. He was not taught how to press "99 Mac" and he did not know how to cycle cameras on March 6, 2008. The Respondent was unaware if Thelusma and Santiago knew how to cycle cameras on March 6, and he agreed that he did not prepare any 49 that day about cameras not cycling. Additionally, no incident reports were prepared that day for malfunctioning cameras.

The Respondent did not tell his subordinates what to do on March 6, 2008,

because it was his belief that his officers knew what their job was. He did not specify to Santiago and Thelusma what cameras they should view, but noted that on some occasions, they would review complaint reports and pin maps of crimes to focus in on specific areas. He recalled doing this on March 6, but asserted that the 32 monitors were not fixed for the entire tour. He did, however, agree that if 32 views were locked and being watched, then 192 were not being viewed at that period of time. While he was aware that his officers were only viewing 32 cameras, based on his lack of training he “... didn’t know what to teach them, they were teaching me.”

He did not call the TARU for help, because he did not know what “cycling” was and could not have asked for help on an issue that he did not know existed. The Respondent said he believed it was alright to watch 32 cameras for a set period of time in a high crime area even though the development had over 200 cameras.

Based on the foregoing, this Court finds that while the Respondent was the supervisor of Thelusma and Santiago, he could not have effectively supervised their handling of the monitors and cameras on March 6, 2008.

This Court further finds that overseeing the 32 monitors, that monitor 224 cameras, is a somewhat complicated task that required the on duty officers to know, at the very least, how the system of cycling works and the Department’s policy regarding when the monitors are permitted in a non-cycling or fixed position on a given day or on a given area.

From the evidence presented to the Court, Thelusma did not have any formal training regarding the cycling process. Therefore he did not know if it was permissible to freeze the monitors and cameras on a set location.

Santiago knew how to set the monitors in a fixed position and while he did not

know how to put them back in the cycling mode, he did not believe, at that time, that he had to because it was never made clear to him through his training.

The fact that the Respondent initially received his training from Thelusma and Santiago speaks volumes as to his understanding of how the cameras worked. In addition, even when he did receive formal training, that training did not include the details of the cycling and the freezing of the monitors and the cameras and the Department's policy as to when these functions could and should be set in place.

The Department's formal training now includes the relevant information pertaining to the cycling of the monitors and cameras, but on March 6, 2008, officers and supervisors were not fully equipped with this important information.

Accordingly, the Respondent is found Not Guilty of this specification.

PENALTY

In order to determine an appropriate penalty, the Respondent's service record was examined. See Matter of Pell v. Board of Education, 34 N.Y.2d 222, 240 (1974). The Respondent was appointed to the Department on June 30, 1995. Information from his personnel folder that was considered in making this penalty recommendation is contained in the attached confidential memorandum.

The Respondent has pled Guilty to wrongfully utilizing a Department vehicle for personal transportation and for wrongfully transporting a civilian in that vehicle. The Respondent has been found Guilty of failing to notify his commanding officer or the Internal Affairs Bureau of allegations of misconduct in which his involvement was alleged. He was also found Guilty contacting an acquaintance concerning official

Department business regarding criminal allegations against the acquaintance.

Divulging Department information, by a member of service, relating to criminal allegations to a possible person suspected of committing a crime is a very serious act of misconduct. The consequences of this act could lead to that person fleeing and possibly never be caught to face his crime. The Respondent as a Lieutenant in this Department should have known better to have not committed this act and in the process betray the trust that the Department places in him to keep this kind of information confidential.

Accordingly, it is recommended that the Respondent forfeit a penalty of 25 vacation days.

Respectfully submitted,

John Grappone

Assistant Deputy Commissioner – Trials



POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM
LIEUTENANT DAVID DENT
TAX REGISTRY NO. 915591
DISCIPLINARY CASE NOS. 84014/08 & 84826/09

On the last three performance evaluations contained in his personnel file, the Respondent received a rating of 3.5-“Competent/Highly Competent” in 2006, 3.0-“Competent” in 2008, and 3.0-“Competent” in 2009.

[REDACTED] He has no prior formal disciplinary history.

For your consideration.



John Grappone
Assistant Deputy Commissioner – Trials